

*United States Court of Appeals  
for the Second Circuit*



**SUPPLEMENTAL  
APPENDIX**



76-7143

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IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

ALBERT BRICK,

*Plaintiff-Appellant.*

—v.—

CPC INTERNATIONAL INC.,

*Defendant-Appellee.*

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**SUPPLEMENTAL APPENDIX**

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CAHILL GORDON & REINDEL  
80 Pine Street  
New York, New York 10005  
(212) 825-0100

*Attorneys for Defendant-Appellee*

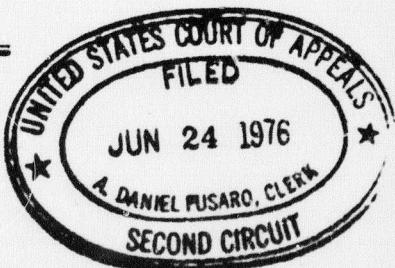


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## CIVIL DOCKET

United States District Court for the District of Columbia

RICHÉY, J.

### Jury demand

2  
CIVIL DOCKET

## United States District Court for the District of Columbia

DATE	PROCEEDINGS	
Jul 26	Complaint, appearance Jury Demand	filed
Jul 26	Summons, Copies (1) and Copies (1) of Complaint issued	ser. 7-27
Aug 17	STIPULATION of counsel extending time for defts. to answer complaint, approved	Richey, J.
Sept. 24	ANSWER of deft. to complaint; App. CAHILL, GORDON, & REINDEL, Denis McMerney (1819 "H" St., N.W., 20005); c/m 9/21/73.	
Sept. 24	CALENDARED CD/N	
Sept. 24	NOTICE of defts. to produce documents; c/m 9/21/73.	
Sept. 24	NOTICE of deft. to take deposition of pltf.; c/m 9/21/73.	
Sept 28	NOTICE by pltf. to the deft. to produce documents; c/m 9-25-73.	
Sept 26	STIPULATION of parties extending time for deft. to answer complaint to October 15, 1973. (fia)	RICHEY, J.
Dec. 3	ANSWER of pltf. to defts' Notice to produce documents; Attachments 1 thru 18; c/m 11-29-73.	
Dec. 6	RESPONSE of deft. to request for production of documents; Attachment; c/s 12-6-73.	
1974		
Feb 21	DEPOSITION of Albert Brick for the deft.; Exhibits Nos 1 thru 16.	
Feb 22	MOTION of deft. to dismiss and for other further and alternative relief; Request for oral hearing; Statement; Affidavit of Denis McInerney; Exhibits A, B, C, D, E-1 thru E-16, F, G, & H; P&A; Appendix A; c/s 2-22-74.	
Mar 6	OPPOSITION of pltff to motion to dismiss; P&A; Verification; c/m 3-5-74.	
Mar 25	MOTION to dismiss heard & denied without prejudice; Pltf. allowed 15 days to amend complaint. (Rep. R. Weber)	Richey, J.

see next page

3  
CIVIL DOCKET

United States District Court for the District of Columbia

ALBERT BRICK

vs. C.P.C. INTERNATIONAL C. A. No. 1503-73

Supplemental Page No. 1

DATE	PROCEEDINGS
Apr 23	ORDER enjoining pltf from communication with members of class; striking derivative allegation of the complaint; granting pltf leave to amend complaint by 5-14-74; denying deft's motion to dismiss without prejudice. (N) Richey, J.
May 3	TRANSCRIPT of proceedings; April 26, 1974; pages 1-19; Rep: Robert M. Weber: Court's copy.
May 13	AMENDED COMPLAINT: c/m 5-13-74
June 13	ANSWER of deft. to amended complaint; c/s 6-13-74.
June 25	MOTION of pltf. for certification of case as class action; P & A's; Statement; c/m 6/21/74.
June 25	MOTION of pltf. for leave to amend complaint; P & A; c/m 6/24/74.
Jul 8	MOTION of deft. to dismiss; Affidavit of Denis McInerney; Exhibit A thru F; P&A; Statement; c/s 7-8-74.
Jul 10	OPPOSITION of pltff. to motion to dismiss; P&A; c/m 7-9-74.
Sept 19	MOTION to certify to be held in abeyance; Motion to dismiss heard & denied without prejudice. (Rep. T. Dourian) Richey, J.
Oct 11	TRANSCRIPT of proceedings of Sept. 19, 1974, pages 1-29. (Rep: Tom Dourian) Court copy.
Oct 29	ORDER amending paragraph 1 and the ad damnum clauses of the first and second counts of the amended complaint; denying deft's motion to dismiss the amended complaint; deferring motion to designate this action as a class action. (signed 10-25-74) (N) Richey, J.
Oct 31	CALENDAR CALL. (Rep. T. Dourian) Richey, J.
Oct 31	ORDER transferring case to the Southern District of New York. (N) Richey, J. turn page

**CIVIL DOCKET**

United States District Court for the District of Columbia

ALBERT BRICK vs. C.P.C. INTERNATIONAL C. A. No. 1503-73 Supplemental Page No. 2

1974 DATE

## PROCEEDINGS

Nov 1 ORIGINAL file and certified copies of docket entries sent to Clerk, USD  
for the Southern District of New York. (N)

CONSOLIDATED WITH 74 Civ 645 on 8/5/75  
CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE MAC MAHON

Jury demand date:

74 Civ. 4938

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Title of Case	Attorneys				
ALBERT BRICK	For Plaintiff:				
vs.	Brick & Intrater 605 Global Bldg. 1025 Vermont Avenue, N.W. Wash., D.C.				
C.P.C. INTERNATIONAL, INC.	For Defendant:  Cahill Gordon & Reindel 80 Pine Street NYC 10005 944-7400				
Statistical Record	Costs	Date	Name or Receipt No.	Rec.	Disb.
J.S. 5 mailed X	Clerk		Transfer		
J.S. 6 mailed	Marshall				
Basis of Action: Violation of SEC Act of 1934 \$175,000,000.00	Docket fee Witness fees				
Action arose at:	Depositions				

74 CIV. 4938 ALBERT BRICK VS. C.P.C. INTERNATIONAL, INC.

JUDGE MAC MAHON

74 CIV. 4938

Date	Proceedings
Nov 11-74	Filed cerified copy of docket entries & Order of Transfer from USDC for the District of Columbia together with all filed papers.

PROCEEDINGS - SDNY

Dec. 4-74	Filed Transcript of 10-31-74, rec'vd by USDC, Dist. of Columbia, & sent to us for our files.
Jun.20-75	Filed defts affdvt in opposition to pltffs motion to retransfer action to USDC for the Dist. of Columbia.
Jun.20-75	Filed defts mem of law in opposition to pltffs motion to retransfer action to the Dist. of Columbia.
8-5-75	Filed Memo-End. on affdvt of 6-10-75. The motion is denied. The issues in this action are still identical with those in Simon & Funk Seeda, 74 Civ 645. Both actions should be & are hereby consolidated to promote judicial economy.....So Ordered, MAC MAHON, J m/n
8-5-75	Filed Endorsement attached to motion to recertify. This putative class action was transferred to the SDNY to be consolidated with 74 Civ 645. Pltffs in (Simon) have voluntarily dismissed their class action allegations. The motion for class action determination in (Brick) is still pending. Pltff now seeks to re=transfer back to Dist. of Columbia. The main reason for the transfer was that the issues of both actions were identical & that their consolidation would avoid duplicative litigation & promote judicial economy. Dismissal of the class action allegations in (Simon) have not changed these reasons, as indicated, for transferring (Brick). We conclude, therefore, that re-transfer is not warranted. .... MAC MAHON, J m/n
2-23-76	Filed Memorandum & Order #43923. Pltff moves for class action certification, pursuant to Rule 23. Def't opposes the motion on the ground that pltff will not fairly & adequately protect in the interest of the class. For the reasons indicated, pltffs motion for class certification is denied in all respects. MAC MAHON, J n/m
3-15-76	PRE-TRIAL CONFERENCE HELD BY Judge Mac Mahon.
3-22-76	Filed pltffs notice of appeal to the USCA from the order of the USDC dtd 2-23-76, denying pltffs motion for class action certification. Copy sent to Cahill Gordon & Reindel, 80 Pine St., New York, N.Y. 10005.
3-30-76	Filed notice that original record on appeal has been Certified & transmitted to the USCA.

MOTION TO DISMISS AND  
FOR OTHER FURTHER  
AND ALTERNATIVE RELIEF

Civil Action  
No. 1503-73

Richey, J.

Defendant, CPC International Inc., hereby moves  
this Court for an order -

(a) dismissing the complaint, pursuant to  
Rules 9(b) and 11 of the Federal Rules of Civil  
Procedure ("FRCP"), for failure to comply with  
the specificity and certification requirements  
of said Rules; or, in the alternative,

(b) determining, pursuant to FRCP 23(c)(1)  
and 56(b), that this action may not be maintained  
as a class or derivative action and granting de-  
fendant partial summary judgment dismissing  
those allegations of the complaint which purport  
to allege class and derivative claims;

(c) restraining plaintiff and his law partner  
and counsel herein from further soliciting any  
members of the putative class and from engaging  
in any further communication with class members  
except by specific permission of the Court; and

(d) granting defendant such other and further relief as the Court may deem just and proper.

This motion is based upon the following grounds:

(i) Dismissal of the entire action is warranted pursuant to FRCP 9(b) because, as demonstrated in Point I(A) of defendant's accompanying Memorandum of Points and Authorities ("defendant's Memorandum"), the complaint fails to specify the basis of plaintiff's information and belief for his fraud allegations.

(ii) Dismissal of the entire action is also warranted under FRCP 11 because, as demonstrated in Point I(B) of defendant's Memorandum, plaintiff's counsel lacked "knowledge, information and belief" for his certificate that good ground existed to support the complaint.

(iii) Alternatively, plaintiff's class action status must be denied and his class and derivative claims must be dismissed because, as demonstrated in Point II of defendant's Memorandum, plaintiff cannot satisfy the "fair representation" prerequisites of FRCP 23 and 23.1 due to his status as an attorney and member of the firm of Brick and Intrater and his active legal role in the prosecution of this case.

(iv) The class claims must also be dismissed because of plaintiff's failure to comply with Rule 1-13 of this Court's Civil Rules and because of plaintiff's situation being atypical of the putative class as a result of his belated stock purchase and the intervening events. (See Point III of defendant's Memorandum.)

(v) The derivative claims also must be dismissed because of plaintiff's failure to meet the requirements of FRCP 23.1 that the complaint be verified, that there be "contemporaneous ownership" of the shares at the time of the alleged wrong, and that plaintiff allege a "demand" or the reasons for failing to make a demand upon Funk's Board. (See Point IV of defendant's Memorandum.)

(vi) Finally, an anti-solicitation protective order is necessary to prevent abuse of the class and derivative provisions of the FRCP. (See Point V of defendant's Memorandum.)

In support of this motion, there are attached hereto (i) the affidavit of Denis McInerney, sworn to on February 21, 1974, together with the various exhibits annexed thereto, (ii) defendant's Memorandum pursuant to this Court's Civil Rule 1-9(b), (iii) a proposed order pursuant to this Court's Civil Rule 1-9(c), (iv) a request for oral hearing pursuant to Civil Rule 1-9(e) and (v) a statement pursuant to this court's Civil Rule 1-9(g). In addition, this motion is based upon the complaint, the answer and all of the proceedings heretofore had herein including, in particular, the

deposition of plaintiff Albert Brick, Esq., taken on December 14, 1973, a certified copy of which, together with the exhibits submitted and marked thereat, have been filed with this Court. We submit that the foregoing demonstrate that there is no genuine issue of material fact and defendant is entitled to the relief requested as a matter of law.

Dated: February 22, 1974

CAHILL GORDON & REINDEL

By Deino McInerney  
A Member of the Firm

Attorneys for Defendant  
CPC International Inc.  
Office and P. O. Address:  
Federal Bar Building West  
Suite 900  
1819 H Street, N.W.  
Washington, D. C. 20006  
202 223-3350

AFFIDAVIT

STATE OF NEW YORK ) Civil Action  
                      : No. 1503-73  
COUNTY OF NEW YORK )  
                      : ss.:  
                      : Richey, J.

DENIS McINERNEY, being duly sworn, deposes and  
says:

1. I am a member of the firm of Cahill Gordon & Reindel, attorneys for defendant CPC International Inc. ("CPC") in the above-captioned action. I am familiar with the facts hereinafter set forth and submit this affidavit in support of defendant's motion for an order -

(a) dismissing the complaint for failure to comply with the prerequisites of Rules 9(b) and 11 of the Federal Rules of Civil Procedure ("FRCP"); or, in the alternative,

(b) determining that the instant action may not be maintained as a class or derivative action and granting partial summary judgment to defendant, pursuant to FRCP 56(b), dismissing those allegations of the complaint which purport to allege class and derivative claims; and

(c) immediately restraining plaintiff and his law partner from further soliciting any other members of the putative class and from engaging in any further communication with class members except with permission of the Court.

Nature of the Case

2. This is a purported class and derivative action brought by Albert Brick, Esq., a practicing attorney and member of the firm of Brick and Intrater, against CPC. The complaint (a copy of which is annexed hereto as Exhibit A) is signed by his law partner, Samuel Intrater, Esq. The alleged derivative beneficiary, Funk Seeds International, Inc. ("Funk"), was a wholly-owned subsidiary of CPC until August 1972 when seventy-five percent of the stock of Funk was sold in a public offering. The putative class is vaguely described in the complaint as "others in the same or like or similar position or status in which plaintiff finds himself" (¶ 3). At his deposition, plaintiff indicated he intended the class to consist of all purchasers of Funk stock commencing with the August 1972 public offering and continuing up to the present time (Brick Dep., pp. 80-81).

The Pleadings

3. The complaint contains three counts: alleged violation of Section 10(b) of the Securities Exchange Act of 1934 ("First Count"), common law fraud ("Second Count") and negligence ("Third Count"), all of which are based upon the

same underlying allegations. These include the allegations that:

(a) Plaintiff first became a Funk shareholder through an open market purchase of six hundred shares of its common stock on February 14, 1973 (Complaint, ¶ 4), which was subsequent to all of the conduct challenged in the complaint.

(b) Before plaintiff's purchase, CPC "had generated" various "maneuverings, transactions and activities" with respect to Funk which purportedly were "improper, illegal, deceptive, fraudulent, misleading, unjust and unfair and were done intentionally, maliciously and wilfully as to the said plaintiff and others who purchased shares of Funk. . . ." (Complaint, ¶ 5).

(c) These activities consisted of (i) CPC's "spin-off of approximately 75% of the shares of stock of Funk Seeds . . . to the public at a price of approximately \$24.00 per share" which is alleged to have occurred in "May, June and July 1972" (or approximately six months before plaintiff bought his Funk stock); (ii) "just prior to said spin-off aforementioned" (and while Funk was still a wholly-owned subsidiary of CPC), Funk's declaration of "a special dividend of approximately \$14,000,000"; and (iii) still earlier (i.e., "prior to May, June or July, 1972"), CPC "knew, or should have known", but failed to disclose (in the August 1972 public offering), that certain franchisees

of Funk (also called "associates") had "indicated its and their desire to terminate its franchise agreements or arrangements with Funk Seeds, which resulted in great loss to Funk" after said terminations were announced in November and December 1972 (Complaint, ¶ 5).

Plaintiff's allegations of wrongdoing are all made "upon information and belief". Although the nature of the information and basis for the belief is nowhere set forth, the complaint requests \$75,000,000 compensatory and \$100,000,000 punitive damages.

4. CPC's answer (a copy of which is annexed hereto as Exhibit B) consists of a general denial of any wrongdoing on its part and includes affirmative defenses (¶¶ 12-14) based on the inappropriateness of plaintiff's class and derivative claims and the belated date of his stock purchase.

Basis For This Motion

5. The grounds for this motion are outlined briefly below and dealt with more fully in our accompanying Memorandum of Points and Authorities.

Dismissal of the Entire Action Under FRCP 9(b)

6. As shown in CPC's accompanying Memorandum of Points and Authorities, the complaint is fatally deficient on its face and no extrinsic factors need be considered in

concluding that its dismissal is mandated as a matter of law for lack of the specificity required by FRCP 9(b).

Dismissal of the Entire Action Under FRCP 11

7. These pleading deficiencies are reinforced by the testimony of Mr. Brick in his December 14, 1973 deposition. (I have been informed that the certified transcript of Mr. Brick's deposition, together with the exhibits thereto, have already been filed with the Court.\*.) Mr. Brick testified that the complaint was filed solely on the basis of a brief Forbes Magazine article, shortly after Mr. Brick read it and without any factual investigation (Brick Dep., pp. 18, 54, 57-58). The Forbes article (a copy of which is annexed hereto as Exhibit F) contains nothing which would support an accusation of wrongdoing against CPC and makes no such accusation. It merely recites the occurrence of the special Funk dividend while Funk was a wholly-owned subsidiary of CPC, the public offering, and the termination notifications (in November and December 1972) of various Funk associates.

8. As indicated in the complaint, all of these events preceded Mr. Brick's acquisition of his Funk stock. The Funk special dividend was declared on July 16, 1972, while Funk was a wholly-owned subsidiary of CPC, and was fully

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\* For the convenience of the Court, a copy of the transcript of the Brick deposition is annexed hereto as Exhibit C. This copy contains the corrections (all of which pertain to immaterial matters) which we understand have been made on the certified transcript that has been filed with the Court. In addition, a brief description of the exhibits to said deposition is annexed hereto as Exhibit D, and the deposition exhibits themselves are annexed hereto as Exhibits E1 through E16.

disclosed to the public at pp. 3 and 32 of the prospectus accompanying the public offering which occurred in late August of last year. The associate terminations all occurred in November and December 1972 and, as indicated in the Forbes article, not even Funk (much less CPC) had prior notice of them. In any event, public announcement of these terminations by Funk also preceded Mr. Brick's acquisition of his Funk stock. See, e.g., Funk's press release of January 8, 1973. A copy of said release, together with a list of the media agencies to which it was distributed, is annexed hereto as Exhibit G.

9. Indeed, Mr. Brick testified that he purchased his Funk stock on February 14, 1973 after receiving a two-page "in-house" statement prepared by Loeb, Rhoades & Co., his securities broker, and that he did not rely on any other document in making his purchase (Brick Dep., pp. 83-86). While Mr. Brick did not have a copy (Brick Dep., p. 84), it would appear that the document annexed hereto as Exhibit H is the statement to which Mr. Brick referred. It is dated December 18, 1972, recites the termination of Funk's two largest associates, and may well have given Mr. Brick actual knowledge of these facts.

10. Mr. Brick's testimony confirmed that neither he nor Mr. Intrater did any factual research (beyond reading the Forbes article) before filing their complaint (Brick Dep., pp. 18, 54, 57-58). Under these circumstances, defendant submits that the complaint should be dismissed under FRCP 11. \*

\* Mr. Brick claimed to have performed certain legal research as to the propriety of Funk's special dividend, which was well prior to the time when Mr. Brick purchased his Funk shares (Brick Dep., pp. 18-19, 57). While CPC denies any such impropriety and denies Mr. Brick's standing to complain of any (for the reasons set forth in our accompanying Memorandum of Points and Authorities), the complaint does not show any basis for any claimed illegality in declaring this dividend.

Dismissal of Class and Derivative  
Claims for Failure to Satisfy the  
"Fair Representation" Requirements  
of FRCP 23 and 23.1

11. Alternatively, defendant requests the dismissal of the class and derivative claims on the basis of plaintiff's inability to satisfy the "fair representation" requirements of FRCP 23 and 23.1 as a result of the inherent conflict of interest which arises from the entanglement of the representative and counsel roles in this case. The facts relating to plaintiff's status as the law partner of plaintiff's counsel in the firm of Brick and Intrater, and his performance of various legal services in connection with the commencement and prosecution of this action, are all contained in the Brick deposition and are referred to in our Memorandum of Points and Authorities.

Lack of Class Action  
Allegations

12. Our Memorandum of Points and Authorities also shows the complaint's complete failure to comply with the pleading prerequisites for the assertion of a class action under this Court's Civil Rule 1-13.

Plaintiff's Belated Stock Purchase  
Makes Him Atypical of the Alleged Class

13. As noted above, the date of plaintiff's stock purchase (February 14, 1973, as set forth in his complaint and confirmed in his deposition) was well after the events complained of in the complaint.

14. In such a situation, at the very least there are substantial questions as to (a) whether plaintiff himself is barred, by virtue of the facts known or available to him, from asserting any claim, and (b) whether plaintiff is in such a different position from the class he purports to represent -- particularly those who bought in the August 1972 public offering -- that he is not an appropriate class representative.

Non-Verification of the Complaint,  
Lack of Contemporaneous Ownership  
And Failure to Make A Demand As  
Required by FRCP 23.1

15. It is evident from the face of the complaint that it has not been verified, and this fact is also confirmed by Mr. Brick's testimony (Brick Dep., p. 6).

16. The complaint fails to allege that plaintiff either owned his Funk stock at the time of the matters complained of or that said stock devolved upon him by operation of law. To the contrary, the allegations of the complaint (¶¶ 4-5) and Mr. Brick's testimony (Brick Dep., p. 83) reveal that neither of these alternative requirements of FRCP 23.1 can be met. (See also ¶ 8, supra.)

17. It is also evident from the face of the complaint that it further fails to comply with FRCP 23.1 in that it does not allege that plaintiff ever made a demand upon Funk's Board requesting them to take action with respect to the matters complained of herein, nor does it allege any reason for failure to make such a demand.

Need For An Anti-Solicitation  
Order In Any Event

18. We respectfully submit that Mr. Brick's deposition and the exhibits annexed thereto establish that plaintiff has communicated with other putative class members and solicited their participation in this action, and has asserted his intention to continue such tactics by soliciting all Funk stockholders (Brick Dep., pp. 16-17, 89-90). An order restraining any such communications except with the approval of the Court can cause no conceivable harm, since it will only restrain plaintiff and his law partner from engaging in conduct that seems clearly improper. On the other hand, permitting such solicitation (particularly in such a questionable representative action as this one) would allow attorneys to engage in conduct which other courts have condemned and would needlessly complicate the present action if the solicitation should continue and be successful in bringing in additional parties.

19. No prior application has been made for any of the relief sought herein or for any similar relief.

Denis McInerney  
Denis McInerney

Sworn to before me this

111 day of February, 1974.

John Street  
Notary Public

**BEST COPY AVAILABLE**

**EXHIBITS D THROUGH H TO FEBRUARY  
21, 1974 AFFIDAVIT OF DENIS  
McINERNEY IN SUPPORT OF MOTION  
TO DISMISS AND FOR OTHER FURTHER  
AND ALTERNATIVE RELIEF**

**Exhibit D**

**Defendant's Exhibits to Brick Deposition**

<u>No.</u>	<u>Description</u>
1	Complaint - Brick v. CPC
2	Defendant's Notice to Produce Documents
3	Letter from Brick & Intrater to Mr. Mulvihill, dated November 29, 1973
4	Plaintiff's Response to Defendant's Notice to Produce Documents
5	Letter from Brick to Mr. Mulvihill, dated September 25, 1973
6	Plaintiff's Notice to Produce Documents
7	Letter from Brick to D. D. Walker, dated October 11, 1973
8	Letter from Brick to C. C. King, dated November 2, 1973
9	Letter from Brick to Forbes, dated September 5, 1973
9A	Letter from Gruenberg of Forbes to Brick, dated September 19, 1973
10	Letter from Intrater to Goldman of SEC, dated September 7, 1973
11	Letter from Brick to Belkin of SEC, dated September 20, 1973
12	Letter from Intrater to Belkin of SEC, dated October 11, 1973
13	Letter from Goldman of SEC to Brick, dated October 16, 1973
14	Letter from Brick to Dicks of Magnuson office, dated October 26, 1973
15A	Letter from Brick to Gilbert brothers, dated August 15, 1973
15B	Letter from Brick to Henry, dated August 15, 1973

<u>No.</u>	<u>Description</u>
15C	Letter from L. Gilbert to Brick, dated August 21, 1973
15D	Letter from Henry to Brick, dated October 5, 1973
15E	Letter from Brick to Henry, dated October 9, 1973
16	Loeb Rhoades Audit Confirmation showing delivery of 600 shares of Funk to Brick on March 7, 1973

EXHIBIT E-1

COMPLAINT

FIRST COUNT

PLAINTIFF BRINGS THIS ACTION AGAINST THE DEFENDANT NAMED HEREIN FOR HIMSELF AND OTHER PERSONS, ASSOCIATIONS, PARTNERS, OR CORPORATIONS WHO ARE SIMILARLY SITUATED AS PLAINTIFF, AND COMPLAINS AND ALLEGES AS FOLLOWS:

1. PLAINTIFF IS AN ADULT CITIZEN OF THE UNITED STATES AND A RESIDENT OF THE DISTRICT OF COLUMBIA.

2. DEFENDANT IS A BODY CORPORATE HAVING OFFICES AND TRANSACTING AND DOING BUSINESS IN THE DISTRICT OF COLUMBIA, AND JURISDICTION IN THIS ACTION IS BASED UPON THE FACT, ALSO, THAT THE AMOUNT IN CONTROVERSY, EXCLUSIVE OF INTEREST AND COSTS, EXCEEDS THE SUM OF \$50,000.00, AND THAT FURTHERMORE, THIS COURT HAS JURISDICTION UNDER SECTION 10(B) OF THE SECURITIES AND EXCHANGE ACT OF 1934, 15 USCA 78(j) AND RULE 10(b)5 PROMULGATED THEREUNDER, 17 CFR 240.10 (b)5; SECTION 20 OF THE ACT, 15 USCA 78(t); SECTION 27 OF THE ACT, 15 USCA 78aa; SECTION 28 OF THE ACT, 15 USCA 78bb(a).

3. THAT SAID ACTION BY THE PLAINTIFF IS A CLASS ACTION AS CONTEMPLATED BY RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE BROUGHT ON BEHALF OF HIMSELF AND OTHERS IN THE SAME OR LIKE OR SIMILAR POSITION OR STATUS IN WHICH PLAINTIFF FINDS HIMSELF AND IS BROUGHT ON BEHALF OF FUNK SEEDS INTERNATIONAL, INC., A BODY CORPORATE, FORMERLY A WHOLLY OWNED SUBSIDIARY OF THE DEFENDANT, AS ITS INTEREST MAY APPEAR BOTH SPECIFICALLY AND GENERALLY.

4. THAT ON, TO WIT, FEBRUARY 1<sup>st</sup>, 1973, THE DATE OF DELIVERY OF SAID SHARES OF COMMON STOCK, THE SAID PLAINTIFF PURCHASED FOR CASH SIX HUNDRED

- 2 -

(600) SHARES OF THE COMMON STOCK OF FUNK SEEDS INTERNATIONAL, INC., A BODY CORPORATE, IN THE DISTRICT OF COLUMBIA, FOR DELIVERY IN THE DISTRICT OF COLUMBIA, BY PURCHASING SAME THROUGH A NEW YORK BROKERAGE FIRM BY TELEPHONIC COMMUNICATION AND OTHER WRITTEN DOCUMENTS SENT THROUGH THE U. S. MAILS.

5. THAT PLAINTIFF AT THE TIME OF THE PURCHASE OF SAID SIX HUNDRED (600) SHARES OF THE COMMON STOCK OF FUNK SEEDS INTERNATIONAL, INC., WAS UNAWARE OF THE MANEUVERINGS, TRANSACTIONS, AND ACTIVITIES GENERATED BY DEFENDANT AS PARENT CORPORATION OF SAID FUNK SEEDS INTERNATIONAL, INC., PRIOR TO AND SUBSEQUENTLY TO FEBRUARY 14, 1973, AND ALLEGES UPON INFORMATION AND BELIEF THAT SAID ACTS, ACTIVITIES, TRANSACTIONS AND MANEUVERS WERE IMPROPER, ILLEGAL, DECEPTIVE, FRAUDULENT, MISLEADING, UNJUST AND UNFAIR AND WERE DONE INTENTIONALLY, MALICIOUSLY AND WILFULLY AS TO THE SAID PLAINTIFF AND OTHERS WHO PURCHASED SHARES OF STOCK OF FUNK SEEDS INTERNATIONAL, INC., A BODY CORPORATE, HEREINAFTER REFERRED TO AS "FUNK SEEDS", AND THAT SPECIFICALLY PLAINTIFF REFERS TO THE SO-CALLED ILLEGAL AND IMPROPER SPIN-OFF OF APPROXIMATELY 75% OF THE SHARES OF STOCK OF FUNK SEEDS TO THE DEFENDANT FOR SALE TO THE PUBLIC AT A PRICE OF APPROXIMATELY \$24.00 PER SHARE, ALL OF WHICH BENEFITTED THE SAID DEFENDANT TO THE EXTENT OF APPROXIMATELY \$60,000,000.00 BEFORE TAXES; THAT SAID ACTIVITY AND SALE WAS ACCOMPLISHED DURING THE MONTHS OF MAY, JUNE AND JULY, 1972; THAT JUST PRIOR TO SAID SPIN-OFF AFOREMENTIONED, DEFENDANT AS PRINCIPAL STOCKHOLDER OF ITS THEN WHOLLY OWNED SUBSIDIARY, FUNK SEEDS, IMPROPERLY AND ILLEGALLY DECLARED A SPECIAL DIVIDEND IN THE AMOUNT OF APPROXIMATELY \$14,000,000.00, SO YOUR PLAINTIFF ALLEGES UPON INFORMATION AND BELIEF; THAT YOUR PLAINTIFF FURTHER ALLEGES UPON INFORMATION AND BELIEF THAT PRIOR TO MAY, JUNE OR JULY OF 1972 DEFENDANT, THROUGH AGENTS, SERVANTS AND EMPLOYEES AND OFFICERS, KNEW, OR SHOULD HAVE KNOWN BY THE EXERCISE OF DUE CARE, THAT CERTAIN OF THE FRANCHISING COMPANIES WHO HANDLED AND SOLD A GREAT PORTION OF THE PRODUCTS PRODUCED BY FUNK SEEDS, HAD INDICATED ITS AND THEIR DESIRE TO TERMINATE ITS FRANCHISE AGREEMENTS OR ARRANGEMENTS WITH FUNK SEEDS, WHICH RESULTED IN GREAT LOSS TO FUNK SEEDS, ALL OF WHICH PLAINTIFF ALLEGES UPON INFORMATION AND BELIEF THAT THE DEFENDANT KNEW, OR SHOULD HAVE KNOWN BY THE EXERCISE OF DUE CARE, AND ALSO KNEW, OR SHOULD HAVE KNOWN, THAT THE DIVIDEND PAID BY SAID FUNK SEEDS WOULD BE SUSPENDED WHEN AND IF SAID FRANCHISERS TERMINATED THEIR WORKING ARRANGEMENT WITH FUNK SEEDS OR AN ANNOUNCEMENT OF THE

SAME WAS MADE PUBLIC. THAT FURTHERMORE, PLAINTIFF ALLEGES UPON INFORMATION AND BELIEF THAT DEFENDANT KNEW, OR BY THE EXERCISE OF DUE CARE SHOULD HAVE KNOWN, THAT UPON THE TERMINATION OF SAID FRANCHISES UNK SEEDS AS A GOING CONCERN WOULD BE AFFECTED BY HEAVY EXPENSES RESULTING IN THE TAKE-OVER FROM THE FRANCHISE COMPANIES WHO WOULD TERMINATE THEIR FRANCHISE AGREEMENTS, AND THAT FUNK SEEDS ALSO WOULD LOSE GREAT SUMS OF MONEY FROM TAKING OVER CERTAIN INVENTORIES FROM SAID FRANCHISEES OR COMPANIES THAT TERMINATED SAID FRANCHISES OR ARRANGEMENTS WITH FUNK SEEDS; THAT FURTHERMORE, THE PLAINTIFF ALLEGES UPON INFORMATION AND BELIEF THAT THE DEFENDANT, THROUGH ITS AGENTS, SERVANTS AND EMPLOYEES AND OFFICERS, KNEW THAT BY REASON OF THE VARIOUS ACTIVITIES AFOREMENTIONED, THE ANNUAL REPORT FOR THE YEAR OF 1972 THAT WOULD ORDINARILY BE DUE IN APRIL OF 1973 WOULD BE AFFECTED BY MANY OF THE AFOREMENTIONED ACTS, ACTIVITIES, TRANSACTIONS AND MANEUVERS AND THAT SAME WOULD UNDOUBTEDLY CAUSE PROBLEMS WITH THE ACCOUNTING METHODS TO BE USED AND WOULD RESULT IN A DROPPING OF THE PRICE OF THE STOCK ON THE OVER-THE-COUNTER MARKET, WHICH IN TRUTH AND IN EFFECT IT DID, CAUSING GREAT FINANCIAL LOSS TO PLAINTIFF AND THE CLASS FOR WHICH HE SUES.

WHEREFORE PLAINTIFF DEMANDS A JUDGMENT FROM THE DEFENDANT IN THE SUM OF \$75,000,000.00 PLUS INTEREST FROM THE DATE OF THE VARIOUS ACTS ALLEGED FOR HIMSELF AND OTHERS IN HIS SAME POSITION OR SITUATION AND ON BEHALF OF FUNK SEEDS INTERNATIONAL, INC., A BODY CORPORATE, AND FOR COURT COSTS AND ATTORNEY'S FEES, AS COMPENSATORY DAMAGES, AND FOR AN ADDITIONAL JUDGMENT IN THE AMOUNT OF \$100,000,000.00 FOR PUNITIVE OR EXEMPLARY DAMAGES, BESIDES COURT COSTS, ATTORNEY'S FEES, AND OTHER EXPENSES INCIDENTAL TO THE BRINGING OF THIS ACTION AT LAW.

SECOND COUNT

1. THE PLAINTIFF ADOPTS AS PART OF THE SECOND COUNT, AND INCORPORATES HEREIN BY REFERENCE, THE ALLEGATIONS SET FORTH IN THE FIRST COUNT.
2. THE PLAINTIFF ALLEGES UPON INFORMATION AND BELIEF THAT THE ALLEGATIONS CONTAINED IN THE FIRST COUNT OF THIS ACTION GIVES AND ALLOWS PLAINTIFF TO BRING AN ACTION AT LAW AGAINST THE DEFENDANT BASED UPON THE COMMON LAW RIGHT OF FRAUD AND DECEIT BY THE DEFENDANT.

WHEREFORE PLAINTIFF DEMANDS A JUDGMENT FROM THE DEFENDANT IN THE SUM OF \$75,000,000.00 PLUS INTEREST FROM THE DATE OF THE VARIOUS ACTS ALLEGED FOR HIMSELF AND OTHERS IN HIS SAME POSITION OR SITUATION AND ON BEHALF OF FUNK

- 4 -

SEEDS INTERNATIONAL, INC., A BODY CORPORATE, AND FOR COURT COSTS AND ATTORNEY'S FEES, AS COMPENSATORY DAMAGES, AND FOR AN ADDITIONAL JUDGMENT IN THE AMOUNT OF \$100,000,000.00 FOR PUNITIVE OR EXEMPLARY DAMAGES, BESIDES COURT COSTS, ATTORNEY'S FEES, AND OTHER EXPENSES INCIDENTAL TO THE BRINGING OF THIS ACTION AT LAW.

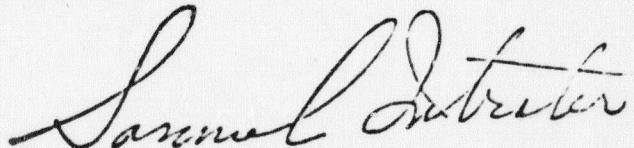
THIRD COUNT

1. THE PLAINTIFF ADOPTS AS PART OF THE THIRD COUNT, AND INCORPORATES HEREIN BY REFERENCE, THE ALLEGATIONS SET FORTH IN THE FIRST COUNT.

2. THE PLAINTIFF ALLEGES UPON INFORMATION AND BELIEF THAT THE ALLEGATIONS CONTAINED IN THE FIRST COUNT OF THIS ACTION RESULTED IN AN ACTION AT LAW AGAINST THE DEFENDANT BASED UPON THE COMMON LAW RIGHT OF ACTION FOR NEGLIGENCE, DUE TO DEFENDANT'S UTTER DISREGARD FOR THE RIGHTS OF OTHERS WITH KNOWLEDGE OF THE ALLEGATIONS AS SET FORTH IN THE FIRST COUNT OF SAID COMPLAINT, AND SAME APPLIES TO THE PLAINTIFF AND OTHER PERSONS IN THE SAME SITUATION AND POSITION AS PLAINTIFF FINDS HIMSELF IN AND ON BEHALF OF FUNK SEEDS INTERNATIONAL, INC., A BODY CORPORATE.

WHEREFORE PLAINTIFF DEMANDS A JUDGMENT FROM THE DEFENDANT IN THE SUM OF \$75,000,000.00 PLUS INTEREST FROM THE DATE OF THE VARIOUS ACTS ALLEGED FOR HIMSELF AND OTHERS IN HIS SAME POSITION OR SITUATION AND ON BEHALF OF FUNK SEEDS INTERNATIONAL, INC., A BODY CORPORATE, AND FOR COURT COSTS, AND ATTORNEY'S FEES, AS COMPENSATORY DAMAGES, AND FOR AN ADDITIONAL JUDGMENT IN THE AMOUNT OF \$100,000,000.00 FOR PUNITIVE OR EXEMPLARY DAMAGES, BESIDES COURT COSTS, ATTORNEY'S FEES, AND OTHER EXPENSES INCIDENTAL TO THE BRINGING OF THIS ACTION AT LAW.

PLAINTIFF DEMANDS TRIAL BY JURY.



SAMUEL INTRATER  
ATTORNEY FOR PLAINTIFF

EXHIBIT E-2

NOTICE TO PRODUCE DOCUMENTS

S I R :

PLEASE TAKE NOTICE that defendant CPC International Inc. ("CPC"), pursuant to Rule 34 of the Federal Rules of Civil Procedure, demands that plaintiff Albert Brick produce for inspection and copying, at 10:00 A.M. on October 25, 1973 at the offices of Cahill Gordon & Reindel, 1819 H Street, N.W., Washington, D. C., the documents described below.

As used herein, the word "document" means any written, printed, typed, or other graphic matter of any kind or nature however produced or reproduced, whether sent or received or neither, including drafts and copies bearing notations or marks not found on the original; it includes, but is not limited to, all memoranda, reports, communications, notes, notations, transcripts, letters, messages, desk calendars, appointment books, diaries, lists, and other documents of any description. The word "you" means Albert Brick, plaintiff in this action, and any employee, agent, attorney, or independent contractor of, or anyone in the service of, Albert Brick. "Funk" means Funk Seeds International, Inc.

DOCUMENTS DEMANDED

Defendant CPC hereby demands the production of all documents referring or relating to any of the following subjects, matters or things:

1. Each of your transactions in Funk securities between August 22, 1972 and July 26, 1973.
2. Attorney's fees, disbursements or other expenses in this action (including but not limited to your retainer of counsel for plaintiff in this action).
3. Any communication (made, attempted or contemplated) between you and any Funk or CPC director, officer, employee, representative or shareholder.
4. Any communication between you and any public medium, or any representative thereof, regarding the subject of this action.
5. All documents which were obtained or received by you (a) on or prior to February 14, 1973, or (b) between February 14, 1973 and July 26, 1973, pertaining to Funk or CPC or the subject matter of this litigation.
6. All documents pertaining to any of the following or to any present or former officer, director, employee, representative or shareholder thereof:

Golden Harvest, Inc.  
(or Golden Harvest Co. or Golden Harvest Hybrid Co.)  
Germain's Inc.  
The J. C. Robinson Seed Company  
Peterson - Biddick Co.  
Louisiana Seed Co. Inc.  
Columbiana Seed Company  
A. H. Hoffman Seeds, Inc.  
Golden Seed Co., Inc.  
Swanson Seed Farms, Inc.  
Shissler Seed Co., Inc.  
Sommer Bros. Seed Co., Inc.  
Thorp Seed Co.  
Garwood Seed Co.  
Akin Seed Co.

Dated: Washington, D. C.  
September 20, 1973

CAHILL GORDON & REINDEL

BY Dennis McNamee  
A Member of the Firm

Attorneys for Defendant  
CPC International Inc.  
1819 H Street, N.W.  
Washington, D. C. 20006

TO:

SAMUEL INTRATER, ESQ.  
Attorney for Plaintiff  
1025 Vermont Avenue, N.W.  
Washington, D. C. 20005

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EXHIBIT E - 3

BRICK AND INTRATER  
COUNSELORS AT LAW  
808 GLOBAL BUILDING  
1025 VERMONT AVENUE, N. W.  
WASHINGTON, D. C. 20005

DISTRICT 7-6853  
7-6854

ALBERT BRICK  
SAMUEL INTRATER

NOVEMBER 29, 1973

DONALD J. MULVIGHILL, ESQUIRE  
CAHILL, GORDON AND REINDEL  
1819 H STREET, N. W.  
WASHINGTON, D. C. 20006

RE: BRICK V. CPC INTERNATIONAL  
CIVIL ACTION No. 1503-73

DEAR MR. MULVIGHILL:

I AM ENCLOSING HEREWITH A COPY OF THE ANSWER TO  
AND COPIES OF DOCUMENTS DEMANDED OF PLAINTIFF.

MR. BRICK IS ANXIOUS TO HAVE HIS DEPOSITION  
TAKEN AS SOON AS POSSIBLE. PLEASE ADVISE ME WHAT DATE  
WILL BE SATISFACTORY. HOWEVER, BEFORE HIS DEPOSITION  
IS TAKEN, I FEEL THAT YOU SHOULD DELIVER TO US THE  
ANSWER TO THE NOTICE TO PRODUCE DOCUMENTS AND DOCUMENTS  
DEMANDED WHICH, OF COURSE, WERE MAILED TO YOU ON  
SEPTEMBER 25, 1973.

PLEASE BE IN TOUCH WITH ME AT ONCE AS WE WANT  
TO GET THIS CASE MOVING.

SINCERELY YOURS,



SAMUEL INTRATER

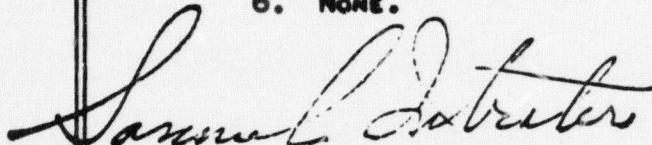
AB/IMS  
ENCL.

ANSWER TO AND COPIES OF DOCUMENTS

DEMANDED OF PLAINTIFF

COMES NOW THE PLAINTIFF IN ANSWER TO DEFENDANT'S NOTICE TO PRODUCE DOCUMENTS FILED HEREIN AND STATES AS FOLLOWS:

1. SEE NOS. 1 AND 2.
2. COURT COSTS \$10.00; U. S. MARSHAL \$3.00.
3. SEE NOS. 3, 4, 5 AND 6. WHEN THE WORD "CONTEMPLATED" IS USED, IT IS TRUE THAT AT THE PROPER TIME FROM MY STANDPOINT I WILL CONTACT MANY COMPANIES, PERSONS, PEOPLE AND GROUPS, INCLUDING ANY FUNK OR CPC DIRECTOR, OFFICER, EMPLOYEE, REPRESENTATIVE OR SHAREHOLDER.
4. SEE NOS. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, AND 18.
5. DO NOT HAVE ANY OTHER DOCUMENTS EXCEPT THOSE MENTIONED IN QUESTIONS 1, 3 AND 4.
6. NONE.



SAMUEL INTRATER  
ATTORNEY FOR PLAINTIFF  
1025 VERMONT AVENUE, N. W.  
WASHINGTON, D. C. 20005  
347-6953

DISTRICT OF COLUMBIA, 991

ALBERT BRICK, BEING FIRST DULY SWEORN ON OATH, ACCORDING TO LAW, DEPOSES AND SAYS: THAT HE IS THE PLAINTIFF IN THE ABOVE AND FOREGOING MATTER; THAT HE HAS READ SAID ANSWER BY HIM SUBSCRIBED AND KNOWS THE CONTENTS THEREOF; THAT THE MATTERS AND THINGS THEREIN CONTAINED ARE TRUE TO HIS BEST KNOWLEDGE, INFORMATION AND BELIEF.



ALBERT BRICK



ALBERT BRICK

-31-

ALBERT BRICK  
COUNSELOR AT LAW  
605 GLOBAL BUILDING  
1025 VERNON AVENUE, N. W.  
WASHINGTON, D. C. 20005

EXHIBIT E - 5

DISTRICT 7-6953  
7-6954

SEPTEMBER 25, 1973

DONALD J. MULVIHILL, ESQUIRE  
CAHILL, GORDON, AND REINDEL  
1819 H STREET, N. W.  
WASHINGTON, D. C. 20006

RE: BRICK V. CPC INTERNATIONAL, INC.  
CIVIL ACTION No. 1503-73

DEAR MR. MULVIHILL:

ENCLOSED PLEASE FIND A NOTICE TO PRODUCE DOCUMENTS. I HAVE USED THE SAME DATE, OCTOBER 25, 1973, AS YOU HAD IN YOUR NOTICE TO PRODUCE DOCUMENTS BUT, AS I WROTE YOU YESTERDAY, THIS DATE IS SUBJECT TO BEING AGREED UPON WITH MR. INTRATER, AS I POINTED OUT TO YOU THAT HE HAD A MOTION IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IN THE NEIMANN CASE THAT PARTICULAR MORNING, AND I FEEL THAT WE SHOULD PICK A DAY ON WHICH NEITHER PARTY WILL HAVE ANY COMMITMENTS.

AT ANY RATE, I SEND YOU MY BEST WISHES.

VERY SINCERELY YOURS,

*Albert Brick*  
ALBERT BRICK

9/28/73 AB/IMS  
9/28/73 32m  
2m ENCL.

NOTICE TO PRODUCE DOCUMENTS

S I R :

PLEASE TAKE NOTICE THAT THE PLAINTIFF, ALBERT BRICK, PURSUANT TO RULE 34 OF THE FEDERAL RULES OF CIVIL PROCEDURE, DEMANDS THAT THE DEFENDANT PRODUCE FOR INSPECTION AND COPYING AT 2:00 o'CLOCK P.M., ON OCTOBER 25, 1973, AT THE OFFICES OF BRICK AND INTRATER, 1025 VERMONT AVENUE, N. W., SUITE 605, WASHINGTON, D. C., THE DOCUMENTS DESCRIBED BELOW.

AS USED HEREIN, THE WORD "DOCUMENT" MEANS ANY WRITTEN, PRINTED, TYPED OR OTHER GRAPHIC MATTER OF ANY KIND OR NATURE HOWEVER PRODUCED OR REPRODUCED, WHETHER SENT OR RECEIVED OR NEITHER, INCLUDING DRAFTS AND COPIES BEARING NOTATIONS OR MARKS NOT FOUND ON THE ORIGINALS; IT INCLUDES, BUT IS NOT LIMITED TO, ALL MEMORANDA, REPORTS, COMMUNICATIONS, NOTES, NOTATIONS, TRANSCRIPTS, LETTERS, MESSAGES, DESK CALENDARS, APPOINTMENT BOOKS, DIARIES, LISTS, DEPOSITS IN BANKS OR TRUST COMPANIES, BANK STATEMENTS, AND OTHER DOCUMENTS OF ANY DESCRIPTION.

DOCUMENTS DEMANDED

PLAINTIFF DEMANDS THE PRODUCTION OF ALL DOCUMENTS REFERRING TO OR RELATING TO ANY OF THE FOLLOWING SUBJECTS, MATTERS OR THINGS:

1. COPIES OF THE CERTIFICATE OF INCORPORATION OF THE STATE OF DELAWARE AND ALL BY-LAWS, INCLUDING AMENDMENTS THEREOF, OF FUNK SEEDS INTERNATIONAL, INC., BY WHICH DEFENDANT, THROUGH ITS AGENTS, SERVANTS AND EMPLOYEES, CLAIMS IT WAS ENTITLED TO DECLARE A DIVIDEND BY FUNK SEEDS INTERNATIONAL, INC., TO DEFENDANT FOR \$13,500,000.00.

2. ANY COMMUNICATION, DOCUMENT, LETTER, ETC., BY AND BETWEEN THE DEFENDANT AND ANY ASSOCIATES OF FUNK SEEDS INTERNATIONAL, INC., HEREINAFTER REFERRED TO AS "FUNK", RECEIVED BY THE DEFENDANT FUNK FROM ASSOCIATES OF FUNK SEEDS INTERNATIONAL, INCLUDING BUT NOT LIMITED TO GOLDEN HARVEST, INC. (OR GOLDEN HARVEST CO. OR GOLDEN HARVEST HYBRID CO.), GERMAIN'S INC., THE J. C. ROBINSON SEED COMPANY, PETERSON-BIDDOCK CO., LOUISIANA SEED CO., INC.,

COLUMBIANA SEED COMPANY, A. H. HOFFMAN SEEDS, INC., GOLDEN SEED CO., INC., SWANSON SEED FARMS, INC., SHISSLER SEED CO., INC., SUMMER BROS. SEED CO., INC., THORP SEED CO., GARWOOD SEED CO., AKIN SEED CO., CONCERNING THE RENEWAL OF, AMENDMENT, OR THE TERMINATION OF, OR ANY COMPLAINTS OR STATEMENTS IN CONNECTION WITH, OR DEALING IN ANY WAY WITH ANY MATTERS PERTAINING TO THE PRODUCTION, PROCESSING, AND MARKETING UNDER THE COMPANY'S NAME AND TRADEMARK AS TO THE CONTRACTS BY AND BETWEEN THE SAID INDEPENDENT COMPANIES KNOWN AS "ASSOCIATES", AS SAME IS REFERRED TO IN THE PRELIMINARY PROSPECTUS DATED JULY 27, 1972, FILED WITH THE SECURITIES AND EXCHANGE COMMISSION BY FUNK, FOR A PERIOD OF FIVE YEARS PRIOR TO THE DATE OF THE FILING OF THIS ACTION ON JULY 26, 1973.

3. ALL DOCUMENTS, INFORMATION, INSTRUMENTS, ETC., FURNISHED BY THE DEFENDANT SINCE OCTOBER 1, 1972, TO THE SECURITIES AND EXCHANGE COMMISSION CONCERNING ITS (MEANING SECURITIES AND EXCHANGE COMMISSION'S) INVESTIGATION OF THE SALE OF FUNK'S SHARES OF STOCK TO THE PUBLIC BY AND THROUGH THE DEFENDANT.

4. ALL CONTRACTS, DOCUMENTS, PERTAINING TO THE CONTRACTS FOR PRODUCTION, PROCESSING, AND MARKETING OF FUNK'S SEEDS BY THE ASSOCIATES (CLAIMED TO BE APPROXIMATELY THIRTEEN INDEPENDENT COMPANIES), RENEWING OR ENTERING INTO CONTRACTS WITH FUNK FOR THE YEARS BEGINNING 1970, 1971, 1972, AND 1973.

5. ANY COMMUNICATION BETWEEN DEFENDANT AND ANY PUBLIC MEDIUM, OR REPRESENTATIVE THEREOF, OR GOVERNMENTAL AGENCY OR AGENCIES, REGARDING THE SUBJECT MATTER OF THIS ACTION.

6. ANY AND ALL COMMUNICATIONS, DOCUMENTS, AGREEMENTS, ETC., BY AND BETWEEN THE DEFENDANT AND FUNK WHEREIN FUNK AGREED TO BE RESPONSIBLE AND LIABLE FOR ANY TAX LIABILITIES OR TO PAY ANY OBLIGATION RESPECTING PAST INCOME TAXES APPLICABLE TO FUNK AND ITS PREDECESSOR BUSINESS.

7. ANY COMMUNICATION, DOCUMENT, INSTRUMENTS, ETC., INDICATING THE VALIDITY OR NON-VALIDITY OF THE DIVIDEND OF \$13,500,000.00 BORROWED FROM THE CHEMICAL BANK ON JUNE 30, 1972, FOR THE PURPOSE OF PAYING THE DIVIDEND BY FUNK TO SAID DEFENDANT.

8. ANY AND ALL DOCUMENTS, COMMUNICATIONS, INSTRUMENTS, AGREEMENTS, ETC., BY AND BETWEEN DEFENDANT AND ANY THIRD PARTY, COMPANY, CORPORATION, OR EXPERTS DEALING WITH THE REASONS FOR THE PUBLIC OFFERING BY CPC AS PER THE PRELIMINARY PROSPECTUS DATED JULY 27, 1972, IN WHICH DEFENDANT STATED THAT IT

BEST COPY AVAILABLE

"CONSIDERS THAT OVER THE LAST FIVE YEARS, IT HAS LARGELY DERIVED THE ADVANTAGES WHICH IT SOUGHT".

9. ANY AND ALL COMMUNICATIONS, DOCUMENTS, INSTRUMENTS, ETC., CONCERNING THE CONSOLIDATED STATEMENT OF RETAINED EARNINGS OF FUNK SEEDS INTERNATIONAL, INC., AND ITS SUBSIDIARIES, AS APPEARS ON PAGE 30 OF SAID PRELIMINARY PROSPECTUS DATED JULY 27, 1972, AND ANY AND ALL BANK DEPOSITS, ACCOUNTS, STOCKS, BONDS, OR OTHER INSTRUMENTS IN WHICH THE ALLEGED BALANCE OF \$12,346,924.00 WAS INVESTED OR DEPOSITED AT THE END OF DECEMBER 31, 1971, AND ANY AND ALL DOCUMENTS RELATED TO THE SO-CALLED "HISTORICAL NET INCOME FOR PERIOD SIX MONTHS ENDED JUNE 30, 1972, OF \$6,615,964.00".

10. ANY DOCUMENTS, COMMUNICATIONS, INSTRUMENTS, ETC., RELATING TO THE LOAN OF \$13,500,000.00 FROM CHEMICAL BANK WHICH WAS USED TO PAY A DIVIDEND TO DEFENDANT BY FUNK.

11. ANY DOCUMENTS, COMMUNICATIONS, RELATING TO HOW THE DEFENDANT MADE CHARGES AGAINST FUNK FOR SERVICES IT RENDERED OR PERFORMED: WHEAT, CORN SEED, OR OTHER MATERIALS OR ITEMS OR FARM PRODUCTS SOLD BY THE DEFENDANT TO FUNK FROM THE TIME THAT DEFENDANT PURCHASED FUNK FROM THE FUNK FAMILY IN 1967.

12. ANY AND ALL DOCUMENTS, INSTRUMENTS, COMMUNICATIONS, ETC., INDICATING WHAT ASSETS OR ITEMS OF VALUE WERE TRANSFERRED BY FUNK TO DEFENDANT, OTHER THAN THE AFOREMENTIONED DIVIDEND OF \$13,500,000.00 FROM 1967 UP TO THE PRESENT TIME.

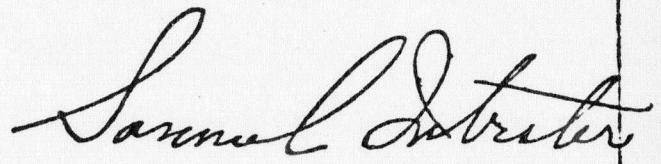
13. ALL DOCUMENTS, INSTRUMENTS, COMMUNICATIONS, ETC., DEALING WITH THE TRANSACTIONS MENTIONED ON PAGE 20 OF THE PRELIMINARY PROSPECTUS DATED JULY 27, 1972, FILED WITH THE S.E.C., BEGINNING WITH THE PARAGRAPH ENTITLED "RELATIONSHIP BETWEEN COMPANY AND CPC".

14. ANY COMMUNICATIONS, DOCUMENTS, INSTRUMENTS, AGREEMENTS, ETC., CONCERNING DEFENDANT'S RELATIONSHIP WITH FUNK WHICH AUTHORIZED FUNK TO SELL TO THE PUBLIC UNDER THE OFFERING IN 1972, 320,000 SHARES OF FUNK STOCK FROM WHICH IT RECEIVED APPROXIMATELY \$7,200,000.00 WHICH WAS USED TO PAY ON THE LOAN FROM CHEMICAL BANK IN THE AMOUNT OF \$13,500,000.00.

15. ANY DOCUMENTS, INSTRUMENTS, COMMUNICATIONS, AGREEMENTS, CONTRACTS, SHOWING THAT DEFENDANT HAD PROVIDED FOR FUNK TO COMPLY WITH PARAGRAPH 47, ARTICLE XI - DIVIDENDS (PAGE 17 OF FUNK'S BY-LAWS), WHEREIN BEFORE PAYMENT OF A DIVIDEND OR DISTRIBUTION OF PROFITS, THERE SHALL BE SET ASIDE A

- 4 -

RESERVE FUND . . . . AT OR BEFORE THE DATE THAT SAID DIVIDEND OF  
\$13,500,000.00-PLUS WAS ACTUALLY PAID OR DISTRIBUTED BY FUNK TO THE DEFENDANT.



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SAMUEL INTRATER  
ATTORNEY FOR PLAINTIFF  
1025 VERMONT AVENUE, N. W.  
WASHINGTON, D. C. 20005  
347-6953

EXHIBIT E-71

OCTOBER 11, 1973

MR. DELMAR WALKER, PRESIDENT  
FUNK SEEDS INTERNATIONAL, INC.  
1300 WEST WASHINGTON STREET  
BLOOMINGTON, ILLINOIS 61701

DEAR MR. WALKER:

AS YOU PROBABLY ALREADY KNOW, I AM A STOCKHOLDER IN FUNK SEEDS INTERNATIONAL, INC., AND RECENTLY FILED A SUIT OR ACTION AGAINST C.P.C. INTERNATIONAL FOR WHOM YOU PREVIOUSLY WORKED AND WHICH WAS THE OWNER OF 100% OF THE STOCK OF FUNK SEEDS INTERNATIONAL, INC., PRIOR TO THE PUBLIC OFFERING, AND I UNDERSTAND FROM THE RECORDS THAT C.P.C. INTERNATIONAL, INC., STILL OWNS 25% OF THE OUTSTANDING SHARES OF STOCK OF FUNK SEEDS INTERNATIONAL, INC. THE ACTION THAT I HAVE HAD BROUGHT IS PENDING IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND IS CIVIL ACTION NO. 1503-73. I REALIZE YOUR CLOSE RELATIONSHIP TO THE OFFICERS OF C.P.C. INTERNATIONAL DUE TO YOUR PAST EMPLOYMENT BY THEM AND PRESENTLY THEY ARE THE OWNER OF THE SHARES OF STOCK WHICH UNDOUBTEDLY CONSTITUTES THE CONTROLLING INTEREST IN FUNK SEEDS INTERNATIONAL, INC.

HOWEVER, IT IS MY CONCEPTION THAT YOU OWE 100% ALLEGIANCE TO YOUR PRESENT COMPANY, FUNK SEEDS INTERNATIONAL, INC., AND SINCE MY ACTION WILL ACTUALLY BENEFIT, IF I AM SUCCESSFUL, THE INTERESTS OF FUNK SEEDS INTERNATIONAL, INC., I FEEL THAT I AM ENTITLED TO YOUR COOPERATION IN THIS LAWSUIT. TO THAT END I WOULD LIKE TO HAVE ACCESS TO ALL THE RECORDS CONCERNING SOME OF THE ALLEGATIONS THAT I HAVE MADE IN MY COMPLAINT, PRINCIPALLY DEALING WITH THE DIVIDEND PAID TO C.P.C. INTERNATIONAL, INC., IN AN AMOUNT IN EXCESS OF \$13,500,000.00 WHICH WAS PAID TO THEM ON JUNE 30, 1972, THE SAME DATE THE BANK LOAN WAS CONCLUDED. THE QUESTION OF THE CONVERSATIONS AND LETTERS BACK AND FORTH BETWEEN THE OFFICIALS OF YOUR COMPANY AND THE SEVEN ASSOCIATES, SEVERAL OF WHOM PRESUMABLY GAVE NOTICE OF TERMINATION WITHIN TWO MONTHS AFTER FUNK SEEDS STOCK WAS SOLD TO THE PUBLIC, IF NOT BEFORE. I BELIEVE THE OTHER FIVE PRESUMABLY DID LIKEWISE IN DECEMBER OF 1972.

ALSO, THE REASONS WHY LOSSES WERE TAKEN ON INVENTORY PURCHASED FROM TERMINATING ASSOCIATES WHEN, I BELIEVE, YOUR

10/11/73

37-

OBLIGATION TO TAKE OVER THE INVENTORY WAS SUBJECT TO THE SAME  
MEETING QUALITY STANDARDS. OF COURSE, THERE ARE MANY OTHER  
QUESTIONS THAT I WILL NEED INFORMATION ON AS THIS SUIT PROGRESSES  
TO TRIAL.

AT ANY RATE, PLEASE LET ME HEAR FROM YOU AS TO HOW WE  
CAN ARRANGE FOR THE TRANSMISSION OF THE REQUESTED INFORMATION  
AND I WOULD BE GLAD TO DISCUSS THIS CASE WITH YOU FACE TO FACE  
AT ANY TIME THAT YOU DESIRE.

VERY SINCERELY YOURS,

ALBERT BRICK

AB/IMS

EXHIBIT E-8

NOVEMBER 2, 1973

CLARK C. KING, ESQUIRE  
LORD, BISSELL AND BROOK  
LA SALLE BANK BUILDING  
135 SOUTH LA SALLE STREET  
CHICAGO, ILLINOIS 60603

DEAR MR. KING:

I RECENTLY WROTE TO D. D. WALKER, PRESIDENT OF FUNK SEEDS INTERNATIONAL, INC., CONCERNING THE LAWSUIT THAT I HAVE FILED IN THE DISTRICT OF COLUMBIA AGAINST C.P.C. INTERNATIONAL, INC., DEALING WITH CERTAIN MATTERS. I AM SENDING YOU A COPY OF MY COMPLAINT, ALTHOUGH I AM SURE YOU HAVE ALREADY RECEIVED ONE, AND WHAT I WOULD LIKE TO SEE, GOING BACK FOR A PERIOD OF FIVE YEARS, IS ALL THE CORRESPONDENCE, DATA, MEMORANDA, MINUTES, OF ALL TELEPHONE CONVERSATIONS, LETTERS AND CONFERENCE HELD BY AND BETWEEN FUNK SEEDS INTERNATIONAL, INC., WITH THE VARIOUS ASSOCIATES, DEALING WITH RENEWALS OF CONTRACTS, DISPUTES, OR ANY MATTERS WHERE INDICATIONS WERE GIVEN THAT RENEWALS MIGHT NOT BE MADE, OR IN OTHER WORDS, ANY FACTS CONCERNING THE ALLEGATIONS IN MY COMPLAINT.

AS I WROTE TO MR. WALKER, AND I AM SURE THAT YOU HAVE RECEIVED A COPY OF MY LETTER TO HIM, ALTHOUGH I WILL ENCLOSE A COPY, I FEEL THAT I AM ENTITLED TO THE COOPERATION OF NOT ONLY HIM BUT OF ALL THE OFFICIALS OF FUNK SEEDS INTERNATIONAL, INC., AS THIS SUIT IS REALLY FOR ITS BENEFIT.

PLEASE LET ME HEAR FROM YOU CONCERNING MY REQUEST.

VERY SINCERELY YOURS,

ALBERT BRICK

AB/IMS  
ENCL.

EXHIBIT E-9

SEPTEMBER 5, 1973

MR. MALCOLM S. FORBES, PRESIDENT  
FORBES  
65TH AVENUE  
NEW YORK, N. Y. 10011

DEAR MR. FORBES:

I AM AN ATTORNEY IN WASHINGTON, D. C., AND RECENTLY I FILED SUIT AGAINST C.P.C. INTERNATIONAL AND WAS ACTUALLY INSPIRED BY AN ARTICLE THAT APPEARED IN YOUR MAGAZINE ON PAGE 18, AUGUST 1, 1973, ISSUE.

SINCE I AM ATTENDING A RETIREMENT PARTY FOR A GOOD FRIEND OF MINE OF MANY YEARS STANDING, NAT GOLDSTEIN, FOR WHOM A PARTY IS BEING GIVEN THE EVENING OF THURSDAY, SEPTEMBER 20, 1973, IN NEW YORK CITY, I WONDER IF IT WOULD BE POSSIBLE FOR ME TO DISCUSS THE ARTICLE THAT APPEARED IN YOUR MAGAZINE WITH THE PERSON OR PERSONS RESPONSIBLE FOR THE SAME WHILE I AM IN NEW YORK. I DO NOT DESIRE ANY PUBLICITY AS I AM A FIRM BELIEVER THAT LAWSUITS SHOULD BE TRIED IN COURT AND NOT BY PUBLICITY, PARTICULARLY WHEN THIS CASE HAS NOW BEEN FILED AND IS PENDING IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, CIVIL ACTION NO. 1503-73.

HOPING TO HEAR FROM YOU FAVORABLY, I REMAIN,

VERY SINCERELY YOURS,

ALBERT BRICK

AB/IMS

**FORBES MAGAZINE**

FORBES BUILDING • 60 FIFTH AVENUE NEW YORK NY 10011  
212/675-7500

(13)

EDITORIAL OFFICES

September 19, 1973

Mr. Albert Brick  
Counselor at Law  
605 Global Building  
1025 Vermont Avenue, N.W.  
Washington, D. C. 20005

Dear Mr. Brick:

We are sorry to be so long in responding to your request for a meeting with staff members in regard to our story on CPC International. Our legal counsel tells us that FORBES as a responsible news magazine cannot get involved in any litigation or legal dispute which may arise from its articles. The consensus is that our staff could not do its job if businessmen felt that the information gathered by FORBES in its research, some of it confidential, were passed on to any other party.

Sincerely,

*Ruth M. Gruenberg*

Ruth M. Gruenberg  
Senior Editor

RMG/pr

EXHIBIT E-10

14  
SEPTEMBER 7, 1973

MR. MERT GOLDMAN  
SECURITIES AND EXCHANGE COMMISSION  
ROOM 4768  
WASHINGTON, D. C. 20546

RE: BRICK VS. C.P.C.

DEAR MR. GOLDMAN:

I ENCLOSE HEREWITH A COPY OF OUR PLEADINGS IN THE ABOVE ENTITLED CASE. AS I NOTIFIED YOU ON THE TELEPHONE, NO ANSWER HAS AS YET BEEN FILED BUT WE HAVE BEEN CONTACTED BY ATTORNEYS FOR THE DEFENDANT AND THEY HAVE REQUESTED US TO GIVE THEM AN EXTENSION OF TIME TO FILE THEIR RESPONSIVE PLEADING. AS SOON AS I HAVE RECEIVED A COPY OF THE SAME, I SHALL BE GLAD TO FORWARD A PHOTOSTAT TO YOU, IF YOU SO DESIRE.

PLEASE LET ME HEAR FROM YOU.

SINCERELY YOURS,

SAMUEL INTRATER

SI/IMS  
ENCL.

EXHIBIT E-11

3  
SEPTEMBER 20, 1973

MR. DAVID H. BELKIN  
DIVISION OF ENFORCEMENT  
SECURITIES AND EXCHANGE COMMISSION  
300 N. CAPITOL STREET, N. W.  
WASHINGTON, D. C. 20546

Re: BRICK v. C.P.C. INTERNATIONAL, INC.

DEAR MR. BELKIN:

AS YOU PROBABLY KNOW, RECENTLY I FILED A SUIT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AGAINST C.P.C. INTERNATIONAL, INC., AS DEFENDANT, WHICH SUIT IS CIVIL ACTION NO. 1503-73, AND AT THE REQUEST OF YOUR MERTON GOLDMAN WE SENT A COPY OF THE PLEADING TO YOUR OFFICE ON SEPTEMBER 7, 1973. IT HAS COME TO MY ATTENTION THAT AT SOME STAGE OF THE GAME YOUR OFFICE INVESTIGATED THE C.P.C. - FUNK SEED TRANSACTIONS AND IN ATTEMPTING TO DISCUSS THIS WITH SOMEONE IN YOUR OFFICE, I AM TOLD THAT THIS INFORMATION THAT YOUR INVESTIGATION DISCLOSED AND WHICH WAS ACTUALLY FURNISHED TO YOUR OFFICE BY C.P.C. INTERNATIONAL, INC., AND FUNK SEEDS INTERNATIONAL, INC., IS CONFIDENTIAL AND CANNOT BE DISCLOSED TO MYSELF AS A LITIGANT. I AM SOMEWHAT TAKEN ASTRAY WITH THAT STATEMENT BECAUSE IT SEEMS TO ME THAT THE SECURITIES AND EXCHANGE COMMISSION, AS A PUBLIC BODY OF GOVERNMENT, SHOULD DISCLOSE ANY INFORMATION TO THE PUBLIC THAT THEIR INVESTIGATION REVEALS, WHETHER THEY PROCEED WITHIN THE CONFINES OF THE SEC OR NOT. I WOULD, THEREFORE, APPRECIATE IF YOU WOULD FURNISH THE INFORMATION THAT I HAVE REQUESTED AND WOULD BE GLAD TO MEET WITH YOU OR ANY MEMBER OF YOUR STAFF TO GO OVER THIS INFORMATION.

IN CONCLUSION, I WOULD LIKE TO POINT OUT TO YOU THAT I AM WELL ACQUAINTED WITH THE FREEDOM OF INFORMATION ACT, 5 U.S.C.A. PARAGRAPH 552(b) ET SEQ. ALSO, I AM WELL ACQUAINTED WITH THE CASE OF M. A. SCHAPIRO & CO. V. S.E.C., 339 F. SUPP. 467, WHICH WAS DECIDED BY AUBREY ROBINSON IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, IN WHICH CASE THE S.E.C. DID NOT

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- 2 -

9/20/73

TAKE UPON ITSELF TO APPEAL AND WHICH, THEREFORE, IS THE LAW  
IN THE DISTRICT OF COLUMBIA.

PLEASE LET ME HEAR FROM YOU.

VERY SINCERELY YOURS,

ALBERT BRICK

AB/IMS

EXHIBIT E-12

OCTOBER 11, 1973

MR. DAVID H. BELKIN  
DIVISION OF ENFORCEMENT  
SECURITIES AND EXCHANGE COMMISSION  
500 N. CAPITOL STREET, N. W.  
WASHINGTON, D. C. 20546

Re: BRICK v. C.P.C. INTERNATIONAL, INC.

DEAR MR. BELKIN:

ON SEPTEMBER 20, 1973, I WROTE YOU CONCERNING THE ABOVE CASE THAT WE HAD FILED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, AND REQUESTED THAT THE DATA, DOCUMENTS, AND INFORMATION AS TO YOUR INVESTIGATION OF THE TRANSACTIONS OF C.P.C. INTERNATIONAL WITH FUNK SEEDS INTERNATIONAL, INC., WHICH PRIOR TO AUGUST, 1972, IT OWNED THROUGH ITS 100% STOCK OWNERSHIP, AND ALSO CONCERNING A DIVIDEND WHICH FUNK SEEDS INTERNATIONAL, INC., DECLARED PAYABLE TO C.P.C. INTERNATIONAL, AND OTHER MATTERS.

I HAVE NOT HEARD FROM YOU CONCERNING MY LETTER AND I AM WONDERING WHETHER YOU INTEND TO IGNORE THE SAME OR WHETHER YOU WOULD BE WILLING TO FURNISH THE INFORMATION REQUESTED. PLEASE LET ME HEAR AT ONCE. OTHERWISE I WILL HAVE TO FILE A MOTION IN THE PENDING ACTION TO COMPEL YOU TO DELIVER THIS BY WAY OF SUBPOENA SERVED UPON YOU. I AM TRYING TO AVOID ALL THIS PROCEDURE, AND AS I POINTED OUT IN THE LETTER, UNDER THE LAW IN THE DISTRICT OF COLUMBIA AND THE UNITED STATES, WE ARE ENTITLED TO THIS INFORMATION.

PLEASE LET ME HEAR FROM YOU AT ONCE. OTHERWISE I SHALL ASSUME THAT YOU INTEND TO IGNORE MY REQUEST.

VERY SINCERELY YOURS,

SAMUEL INTRATER

AB/IMS



DIVISION OF  
ENFORCEMENT

EXHIBIT E-13

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

ATTN:  
Mr. Inspector  
Mr. [unclear]  
[unclear]

OCT 16 1973

17  
Mr. Albert Brick  
605 Global Building  
1025 Vermont Avenue, N.W.  
Washington, D.C. 20005

Re: Brick v. CPC International, Inc.

Dear Mr. Brick:

I am in receipt of your letter dated September 20, 1973 in which you requested the contents of investigatory files given by CPC International to the Securities and Exchange Commission.

I must inform you that it is the general policy of the Commission to conduct privately any investigation it may undertake in enforcing the securities laws, and any investigation would not be a matter of public information, generally, unless the Commission determines to take enforcement action. The basic consideration that supports this policy and the exemptions of the Freedom of Information Act, outlined in 5 U.S.C. 552(b), is that the Commission must preserve the confidentiality on which it relies in order to secure the voluntary cooperation of companies seeking in good faith to comply with the securities laws. Frankel v. Securities and Exchange Commission, 460 F.2d 813 (2d. Cir. 1972), cert. den. To remove the confidentiality might impair effective investigatory and enforcement activity.

The disclosure section of the Freedom of Information Act, 5 U.S.C. 552(a), requires governmental agencies to make public disclosures of "methods whereby the public may obtain information" not subject to exemptions outlined in Section (b). The Commission in its adherence to this provision has provided the public with accessibility to a registered company's periodic filings and reports.

Section (b)(7) of the Freedom of Information Act provides that "investigatory files compiled for law enforcement purposes" are exempt from the disclosure provisions of section (a). In addition section (b)(5) exempts "inter-agency or intra-agency memorandums which would not be available by law to a party other than an agency

in litigation with the agency," and section (b)(4) exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Pursuant to these exemptions, the staff must decline to make the records of CRC International available for public perusal.

In your letter, M. A. Shapiro & Co. v. Securities and Exchange Commission, 339 F. Supp. 467 (D.D.C. 1972), was cited for the proposition that the Commission must disclose information received pursuant to a formal or informal investigation. That decision was based on the fact that the materials held by the Commission were not obtained for law enforcement purposes, but for promulgating specific stock exchange rules and policies.

If you disagree with the staff's position, it is your right to ask that your request, in addition to any materials in support of your position, be forwarded to the Commission for review.

Please feel free to contact me again.

Very truly yours,

David H. Belkin  
Branch Chief

By Merton B. Goldman

Merton B. Goldman  
Attorney

EXHIBIT B-14

18  
OCTOBER 26, 1973

MR. NORMAN DICKS  
CHIEF LEGISLATIVE COUNSEL  
SENATOR WARREN G. MAGNUSEN  
ROOM 127, OLD SENATE OFFICE BUILDING (RUSSELL BLDG.)  
WASHINGTON, D. C. 20510

DEAR MR. DICKS:

IN ACCORDANCE WITH OUR CONVERSATION, I AM ENCLOSING HEREWITH A COPY OF THE COMPLAINT IN MY SUIT AGAINST C.P.C. INTERNATIONAL, INC. AS AN ASPIRING LAWYER YOU WILL RECOGNIZE THAT THIS IS SORT OF AN INTENSE SUIT AND SINCE I AM UP AGAINST A CORPORATION THE SIZE OF C.P.C. INTERNATIONAL, INC., I WILL NEED ALL THE HELP POSSIBLE IN ORDER TO INSURE THAT JUSTICE IS DONE IN THIS CASE AND THAT THE PUBLIC IS PROTECTED.

IT HAS COME TO MY ATTENTION THAT CERTAIN INVESTIGATIONS WERE MADE BY THE SECURITIES AND EXCHANGE COMMISSION LOOKING TOWARD FERRETING OUT ANY VIOLATIONS, BOTH CIVILLY AND CRIMINALLY, OF THEIR STATUTES. APPARENTLY THEY DID NOT GO FORWARD WITH ANY ACTION AGAINST C.P.C. INTERNATIONAL, INC., NOR FUNK SEEDS INTERNATIONAL, INC. PURSUANT THERETO WE WROTE TO MERTON B. GOLDMAN, ATTORNEY FOR SEC, AND WHEN HE REFUSED TO TURN THE INFORMATION IN HIS FILES OVER TO THIS OFFICE, WE THEN WROTE TO HIS SUPERIOR. I AM ENCLOSING PHOTOSTATIC COPIES OF LETTERS WHICH WILL OUTLINE THIS ENTIRE POSITION OF THEIRS - LETTERS DATED SEPTEMBER 20, 1973, OCTOBER 11, 1973, BOTH WRITTEN BY MY PARTNER [REDACTED] INTRATER, AND A COPY OF THEIR ANSWER DATED OCTOBER 16, 1973, BY MERTON B. GOLDMAN.

WE ARE OF THE OPINION THAT THE INTERPRETATION THAT THEY ARE ATTEMPTING TO DRAW IS INCORRECT. I WONDER IF YOU WOULD LOOK INTO THIS MATTER TO DETERMINE FOR US IF IT WILL BE POSSIBLE TO PROCURE THIS INFORMATION WHICH WOULD BE VERY HELPFUL IN THIS LITIGATION, WHICH IS A CLASS ACTION AS WELL AS AN INDIVIDUAL ACTION.

IF THERE IS ANY FURTHER INFORMATION YOU DESIRE, OR IF YOU WISH TO DISCUSS THIS MATTER WITH ME, PLEASE BE FREE TO CALL UPON ME

- 2 -

10/26/73

AND WE WILL BE GLAD TO DISCUSS THIS AT GREAT LENGTH WITH  
YOU.

WITH KINDEST PERSONAL REGARDS, I REMAIN,

VERY SINCERELY YOURS,

ALBERT BRICK

AB/IMS  
ENCL.

EXHIBIT E-15

AUGUST 15, 1973

MESSRS. LEWIS D. AND JOHN J. GILBERT  
1165 PARK AVENUE  
NEW YORK, N. Y. 10028

DEAR SIRS:

I NOTE THAT IN GOING OVER SOME OF THE DOCUMENTS CONCERNING C.P.C. INTERNATIONAL, INC., THAT ON OCCASION YOU HAVE ATTENDED SOME OF THE MEETINGS AND ATTEMPTED TO HAVE AMENDMENTS PASSED.

I WOULD LIKE TO HAVE THE OPPORTUNITY TO DROP UP TO SEE YOU ON ONE OF MY TRIPS TO NEW YORK TO DISCUSS WITH YOU THE MATTER OF A SUIT WHICH I FILED AS A STOCKHOLDER OF FUNK SEEDS INTERNATIONAL, INC., A FORMERLY 100%-HELD SUBSIDIARY OF C.P.C. INTERNATIONAL, INC., WHICH I HAVE RECENTLY SUED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, ALLEGING IMPROPRIETY AND POSSIBLE FRAUD BASED UPON INFORMATION AND BELIEF, IN THE DECLARATION OF A DIVIDEND IN THE AMOUNT OF \$13,500,000 PRIOR TO SELLING TO THE PUBLIC OVER TWO MILLION SHARES OF STOCK FOR WHICH THEY NETTED APPARENTLY AROUND \$31,000,000 AT A TIME THAT THEY PROBABLY KNEW MUCH INFORMATION THAT THEY DID NOT DISCLOSE TO THE PUBLIC, WHICH THE PUBLIC WAS ENTITLED TO KNOW ABOUT. AT ANY RATE, THIS SUIT IS NOW PENDING AND I WOULD CERTAINLY LIKE TO DISCUSS IT WITH YOU.

HOPING TO HEAR FROM YOU SHORTLY, I REMAIN,

VERY SINCERELY YOURS,

ALBERT BRICK

AB/IMS

AUGUST 15, 1973

MR. JOHN C. HENRY  
5 EAST 93RD STREET  
NEW YORK, N. Y. 10028

DEAR SIR:

I NOTE THAT IN GOING OVER SOME OF THE DOCUMENTS CONCERNING C.P.C. INTERNATIONAL, INC., THAT ON OCCASION YOU HAVE ATTENDED SOME OF THE MEETINGS AND ATTEMPTED TO HAVE AMENDMENTS PASSED.

I WOULD LIKE TO HAVE THE OPPORTUNITY TO DROP UP TO SEE YOU ON ONE OF MY TRIPS TO NEW YORK TO DISCUSS WITH YOU THE MATTER OF A SUIT WHICH I FILED AS A STOCKHOLDER OF FUNK SEEDS INTERNATIONAL, INC., A FORMERLY 100% HELD SUBSIDIARY OF C.P.C. INTERNATIONAL, INC., WHICH I HAVE RECENTLY SUED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, ALLEGING IMPROPRIETY AND POSSIBLE FRAUD, BASED UPON INFORMATION AND BELIEF, IN THE DECLARATION OF A DIVIDEND IN THE AMOUNT OF \$13,500,000 PRIOR TO SELLING TO THE PUBLIC OVER TWO MILLION SHARES OF STOCK FOR WHICH THEY NETTED APPARENTLY AROUND \$31,000,000 AT A TIME THAT THEY PROBABLY KNEW MUCH INFORMATION THAT THEY DID NOT DISCLOSE TO THE PUBLIC, WHICH THE PUBLIC WAS ENTITLED TO KNOW ABOUT. AT ANY RATE, THIS SUIT IS NOW PENDING AND I WOULD CERTAINLY LIKE TO DISCUSS IT WITH YOU.

HOPING TO HEAR FROM YOU SHORTLY, I REMAIN,

VERY SINCERELY YOURS,

ALBERT BRICK'

AB/IMS

LEWIS D. GILBERT  
JOHN J. GILBERT  
1165 PARK AVENUE  
NEW YORK, N.Y. 10028

(8)

August 21, 1973

Mr. Albert Brick  
605 Global Bldg.  
1025 Vermont Avenue, N.W.  
Washington, D.C. 20005

Dear Mr. Brick:

Thank you for your letter of the 15th.

Of course, you may drop in and see me anytime. I  
will be on vacation from August 25th to the 1st of  
November.

As you know, I never involve myself in litigation  
but I always enjoy learning about companies.

Sincerely,

  
Lewis D. Gilbert

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Dear Mr. Brick;

As I have been in and out of New York since Aug 15<sup>th</sup>, I did not write you sooner. I will be here from now on except for the 19<sup>th</sup> 20<sup>th</sup> & 21<sup>st</sup>. I am sorry I did not write you sooner.

Very truly yours,

John C. Henry.  
5 East 93<sup>rd</sup>  
N.Y. 10028 N.Y.

Oct 5, 1973.

OCTOBER 9, 1973

MR. JOHN C. HENRY  
5 EAST 93RD STREET  
NEW YORK, N. Y. 10028

DEAR MR. HENRY:

I'LL HAVE TO LET YOU KNOW WHEN I'M COMING TO  
NEW YORK. I WILL CALL YOU AHEAD AND SEE IF IT IS CON-  
VENIENT TO GET TOGETHER WITH YOU.

MEANTIME, BEST WISHES.

VERY SINCERELY YOURS,

ALBERT BRICK

AB/IMS

Loeb, Rhoades & Co.  
Forty Two Wall Street, New York, N.Y. 10005. Telephone 212 530-4000. Cable address "Loebcarl"  
Members New York Stock Exchange, Inc.

IAR 31 1973

MR. ALBERT BRICK  
1025 VERNON AVENUE N.W.  
WASHINGTON, D C 20005  
SUITE 605

Your Account Number  
1 047 01 13731

**Audit Confirmation**

JAN 31 1973 MR. ALBERT BRICK  
1025 VERNON AVENUE N.W.  
WASHINGTON, D C 20005  
SUITE 605

577-52-1106

To: Messrs. Frederick S. Todman & Co., Certified Public Accountants, 111 Broadway, New York, N.Y. 10006  
I (we) acknowledge receipt of statement of my (our) account with LDRF RHOADES & CO., designated by the above number, as at the close of business on the above date and find it to be correct except as noted below.

**Signed** **Date**  
\* Only personal signatures are acceptable where accounts are in individual names. In case of other accounts, please affix rubber stamp, author and signature and title or capacity of person or persons signing. Five confirmation Please see reverse side for additional information.

## Exceptions

EXHIBIT E-16

If this statement is not carried in every request please report it at once to a member of our main office

Explanation of all symbols on reverse side

Retain this statement for income tax purposes and to verify ownership whenever that may be necessary.

EXHIBIT F

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## *Suddenly Last Summer*

---

### *Was it dumb luck that CPC International made a \$50-million killing on the Funk Seed spinoff?*

LAST YEAR around this time, \$1.5-billion-sales CPC International tried its hand at a little Jimmy Ling-style asset redeployment. Noting that hybrid corn seed producers like De-Kalb AgResearch and Northrop, King were stock market favorites, the big food company decided to spin off 75% of a small \$41-million-sales subsidiary named Funk Seed International. After all, Funk was one of the oldest corn seed producers, one of the top three in size. Why hide such a light under the CPC bushel?

Well, the idea worked like a charm. CPC investment banker Dillon, Read brought old Funk out at \$24, and investors quickly snapped up all 2.55 million shares. CPC grossed some \$50 million pretax on the deal. Quite a handsome profit, since it had acquired the total assets of Funk back in 1967 in exchange for \$12.6 million worth

of CPC shares. But there was a kicker that made the deal even sweeter for CPC. Just prior to the spinoff CPC had tapped Funk for a special dividend of \$13.5 million, covering its initial investment with interest. To top it off, CPC remained Funk's controlling stockholder with 25% ownership after the offering.

Lately, however, investors who bought Funk Seed last summer are beginning to wonder if CPC might not have been a bit *too* shrewd. Only six months after the spinoff, investors spotted a disturbing warning when Funk reported its earnings for 1972. While earnings increased 25% during the year, a footnote indicated that there could be inventory write-downs as a result of terminating a number of marketing contracts. How big a write-down? Shareholders would have to wait until later to find out.

Then in April, Funk's audited 1972 annual report reached stockholders. The warning signal had gotten a bit louder. Funk's accountants, Main Laffrentz (also CPC's auditors), refused to give Funk a clean opinion. Instead, they insisted upon a qualification: "subject to the ultimate determination of contract termination costs as described in Note 10. . . ."

Funk President Delbert D. Walker's explanation was scarcely reassuring. "During the closing months of 1972, the termination of contracts between seven franchised associated companies and Funk Seeds was announced, to take effect at the close of current sales year June 30, 1972 for corn, and August 31, 1973 for sorghum. Funk will assume direct production and marketing operations in areas formerly served by the associates."

Inventory losses might almost equal 1972's \$4-million earnings, a footnote hinted. Also, Funk would have to spend heavily to handle the marketing that associates had been doing. Funk told stockholders that it would have to lay out \$8.8 million to assume the inventory liability and as-

sets of its largest franchiser, Columbian Seed. Since Funk had already been forced to borrow from the banks and issue 320,000 additional shares to pay the pre-spinoff CPC special dividend of \$13.5 million, it came as little surprise in late June when President Walker announced that the current dividend would be suspended. Walker added the gloomy news that earnings would be sharply affected by heavy expenses resulting from the associates' situation. Further, Funk faced a deteriorating sales pattern, a stark contrast to the pretty picture in the annual report.

By this time, Funk's stock—weakening steadily—had sunk to 7%, a loss in market value of some \$60 million in less than ten months.

The \$50-million questions on shareholders' minds were 1) whether CPC had known of the possibility of these contract terminations prior to the lucrative spinoff; 2) why did CPC take \$13.5 million out of Funk's limited working capital? According to President Walker, however, "It came out of the blue. We had no prior knowledge that it was coming. The nego-

tiations went on for some time before we came to an agreement. Then we made the announcement." Did those negotiations begin prior to the time CPC spun off Funk? Heavens no! says Walker. They began several months after the spinoff. "Regarding the dividend," says Walker, "they never took one before, so CPC figured we owed them one." But a dividend amounting to \$3.5 million more than Funk ever earned? As for CPC, it denied through a spokesman any prior knowledge regarding the subsequent loss of the associates.

Unhappy as they are with their investment in Funk Seed, big institutional holders cannot believe that CPC would deliberately mislead investors. The reason? "I just don't think CPC's management is very astute," says Edward Huebner, vice president of Colonial Management Associates. "They probably couldn't see much beyond Funk's going public."

Meanwhile, shortsighted, not very astute CPC has fumbled along to the bank with its \$50 million, while those razor-sharp institutional investors sit with \$60 million in paper losses. ■

January 8, 1973  
For Release at  
12 Noon Chicago Time

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EXHIBIT G

( FINAL )

FINAL

FUNK SEEDS INTERNATIONAL AGREES TO PURCHASE  
COLUMBIANA SEED COMPANY

It was announced today that Funk Seeds International, Inc., Bloomington, Illinois, and the shareholders of Columbiana Seed Company, Eldred, Illinois, have agreed in principal, subject to the approval of the Funk Board of Directors and formal contract, to the purchase by Funk of all the shares of Columbiana. The proposed purchase price is \$8,220,000.00 payable in installments over a three year period. Installment payments of \$2,400,000.00 and \$2,600,000.00 are to be made at the time of closing and on December 15, 1973, respectively. The remaining payments are to be made August 15, 1974 and August 15, 1975.

Funk Seeds International is a leading producer and marketer of hybrid seed corn. It also produces and markets sorghum and sorghum sudangrass seed. For more than 30 years, Columbiana Seed Company has produced, and marketed under the Funk's G-Hybrid trademark, hybrid seed corn and hybrid sorghum and sorghum sudangrass seed under a franchise agreement with Funk Seeds International, Inc. in a marketing area comprising the states of Missouri, Kentucky, Tennessee, North Carolina, South Carolina and part of Illinois. Funk intends to assume responsibility for marketing operations in this area.

The franchise agreements of six other Funk Associates have been terminated effective June 30, 1973. Funk will be required to purchase from each of these Associates certain seed inventories the full extent of which cannot be determined until after June 30, 1973. Five of these Associates operate within the State of Illinois. On July 1, 1973 Funk also intends to assume responsibility for marketing operations in the areas served by these six Associates.

03625

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**LOEB**  
**RHOADES**

Investment Committee  
Notes

Industry:  
Food, Beverages & Tobacco

F U N K S E E D S I N T E R N A T I O N A L \*

Com.Shs. (Mill.)	1972 Price	1972 Range	Earnings per Share			P/E 1973P	Ind. Divd.	Yield
			1971	1972E	1973P			
3.4	23	23-16	\$1.01	\$1.25	\$1.35	17.0	10¢	.4%

\*Loeb, Rhoades & Co. makes a market in the stock of this company.

Funk Seeds International, formerly a wholly owned subsidiary of CPC International but now 75% owned by the public, is a very attractive although somewhat speculative commitment in the technology-oriented seed industry, with the potential over the next few years for both a major increase in earnings and an expanded multiple.

Funk is essentially a one-product company, deriving over 80% of sales from corn, but it has been a leading industry factor in hybrid corn since the 1930s, and ranks second or a strong third with an estimated 17% market share nationally. It also develops and markets hybrid sorghum and other seeds, and has done extensive research on hybrid wheat. It is well established in Canada and western Europe, and last year 18% of sales and 24% of earnings were from international operations.

Under CPC auspices since 1967, the company was strengthened considerably and began a vigorous recovery in share of market and operating results. In 1971 the rejuvenation efforts received an unusual boost from outside influences. The 1970 corn crop had been damaged by an entirely new variety of blight, and in 1971 farmers sought to obtain as much of the more resistant "N-cytoplasm" seed as possible. Fortunately Funk had noted the susceptibility of "T-cytoplasm" seed to other diseases and had converted back to the more traditional "N" type. Thus in 1971 in addition to benefiting from an increase of more than 10% in national corn plantings, Funk increased its share of market substantially, and its corn sales increased 68% over 1970, with earnings more than doubling to \$1.01 per share.

Management recognized from the start that its 1971 advantage over competitors would disappear in 1972, since "N-cytoplasm" seed would then be in ample supply. It geared its entire marketing effort to developing and maintaining customer goodwill, acquainting the farmers with the high quality and productivity of its seed, and trying to build enduring business relationships. While some slippage in market share could still occur, Funk's results during the 1972 season were highly encouraging. With national corn acreage reduced, the company's unit volume declined only a little more than the industry total, indicat-

December 18, 1972

(over)

ing that market share was maintained close to the high level of 1971. As a result of an improved product mix and reduced costs, Funk's earnings for calendar 1972 should move up to \$1.25 per share. The outlook for 1973 appears highly positive. We expect planted acreage next spring to show a good increase (perhaps 10%, as a guess), and anticipate that Funk should at least maintain its share of the market, while operating profit margins should again expand.

While Funk is attractive at current levels as a sound, well-managed company whose shares are the cheapest in the group (DeKalb is 35 times projected 1973 earnings and Northrup King 26), recent developments promise to change the entire complex of the company, and indicate the possibility of substantial appreciation in the shares. Funk's organizational structure is unique in that the company markets directly in only nine states, mainly in the central Corn Belt, accounting for just 48% of U.S. corn acreage. The rest of the country is serviced by thirteen independent seed growers and distributors, called "associates", marketing seeds under the Funk brand name and paying royalties to Funk. This system has disadvantages, not only because Funk earns significantly less per unit sold than if it were doing business directly in these areas, but also because it is unable to develop the full potential for its products in areas where the associates have not done a good job. (The aggregate market share of the associates in the territory they cover appears to be about 16%, compared with 18% for the parent company itself in its home area.) Now that it is a public company, Funk has been studying ways to remedy these problems. While the contracts with the associates are terminable annually by either party, Funk's management was reluctant to cancel any contracts unilaterally, since its relationships with the associates go back thirty years on average.

On December 4, 1972, Funk announced that the two largest associates had voluntarily terminated their contracts, effective the end of the 1973 selling season. This means that starting in 1974, Funk will have direct access to a largely contiguous area encompassing two-thirds of U.S. corn acreage. It is expected that in the case of the larger and more successful of the two associates, a firm operating in the mid-South, the existing marketing organization will be taken over intact by Funk, which should facilitate a smooth changeover. In the case of the smaller firm, which operates in the western part of the Corn Belt and has been less successful competitively, the associate evidently intends to remain in the seed business independently and will retain its sales force; thus Funk will have to set up its own marketing system.

The cost of gearing up for a substantially larger volume of business the following year undoubtedly will have a negative effect on profit margins during 1973, with the impact perhaps most noticeable in the second half, when in any event the company has minimal sales and operates at a loss. Thus despite the favorable operating climate discussed earlier, it seems prudent to assume only a modest increase in earnings to \$1.30-\$1.35 per share next year. In 1974, however, the company should enjoy major increases in both sales and earnings. Assuming that volume in the two associate territories is maintained at present levels, Funk's corporate sales could increase an estimated 30%. We believe 1974 earnings could reach \$1.75-\$2.00 per share, depending on how smoothly the transition occurs and whether there are continuing expenses arising from the changeover. Moreover, this territorial expansion should bring incremental benefits beyond 1974, since the western territory in particular seems to offer opportunities for substantial volume growth.

Robert J. Cummings

OPPOSITION TO MOTION TO DISMISS

COMES NOW THE PLAINTIFF, ALBERT BRICK, BY AND THROUGH HIS ATTORNEY,  
AND OPPOSES THE MOTION TO DISMISS AND AS GROUNDS THEREFOR STATES AS FOLLOWS:

1. SAID MOTION DOES NOT STATE SUFFICIENT GROUNDS WHEREFORE THIS  
ACTION SHOULD BE DISMISSED.

2. SUCH OTHER ARGUMENTS AS ARE SET FORTH AT TIME OF HEARING.

WHEREFORE, PLAINTIFF PRAYS THAT THE MOTION TO DISMISS BE DENIED.



---

SAUEL INTRATER  
ATTORNEY FOR PLAINTIFF  
1025 VERMONT AVENUE, N. W.  
WASHINGTON, D. C. 20005  
347-6953

VERIFICATION

DISTRICT OF COLUMBIA, ss:

ALBERT BRICK, HAVING BEEN FIRST DULY SWEORN UPON OATH, DEPOSES AND STATES AS FOLLOWS: THAT HE IS THE PLAINTIFF IN THE ABOVE ENTITLED CAUSE. THAT HE HAS READ THE COMPLAINT FILED HEREIN ON HIS BEHALF. THAT THE FACTS SET FORTH IN SAID COMPLAINT ARE TRUE TO HIS BEST KNOWLEDGE, INFORMATION AND BELIEF.

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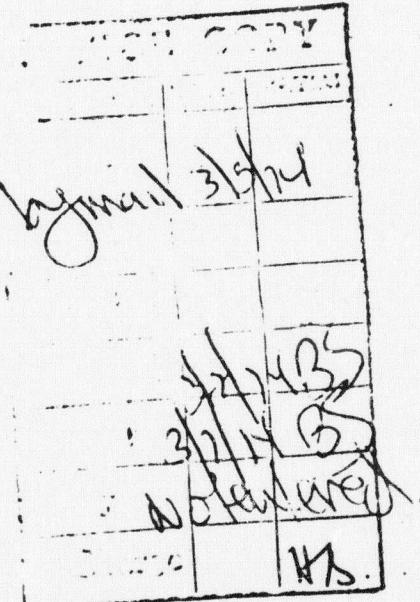
ALBERT BRICK

SUBSCRIBED AND SWEORN TO BEFORE ME THIS

5 <sup>45</sup> DAY OF MARCH, 1974.

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NOTARY PUBLIC, D. C.



COPY OF THE FOREGOING VERIFICATION MAILED THIS 5 <sup>45</sup> DAY OF MARCH, 1974, TO CAHILL, GORDON AND REINDEL, ATTORNEYS FOR DEFENDANT, SUITE 900 FEDERAL BAR BUILDING WEST, 1819 H STREET, N. W., WASHINGTON, D. C. 20006.

SAMUEL INTRATER  
ATTORNEY FOR PLAINTIFF

O R D E R

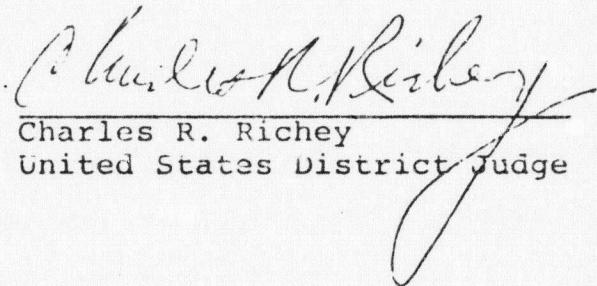
Defendant having moved this Court for an order dismissing the complaint herein or, alternatively, striking the class and derivative allegations thereof, and restraining plaintiff and his counsel from solicitation of members of the putative class, as well as for other relief (hereafter "defendant's motion"), and the Court having heard argument of counsel for both sides on April 26, 1974, and having considered the various written and oral submissions of both sides, it is this 29th day of April, 1974:

ORDERED that plaintiff and his counsel are enjoined from any communication with members of the putative class pending further order of this Court; and it is

FURTHER ORDERED that the stockholders derivative allegations of the complaint herein are stricken; and it is

FURTHER ORDERED that plaintiff is granted leave to amend and further specify the remaining allegations of his complaint provided that said amended complaint is filed and served by May 14, 1974; and it is

FURTHER ORDERED that in all other respects defendant's motion is denied without prejudice to renewal of any aspect thereof in the event that plaintiff files an amended complaint.

  
Charles R. Richey  
United States District Judge

Dated: April 29, 1974

MOTION TO DISMISS

Civil Action  
No. 1503-73  
Richey, J.

Defendant, CPC International Inc., hereby moves  
this Court for an order -

(a) dismissing the amended complaint, pursuant  
to Rules 9(b) and 11 of the Federal Rules of Civil  
Procedure ("FRCP"), for failure to comply with the  
specificity and certification requirements of said  
Rules; and

(b) granting defendant such other and further  
relief as the Court may deem just and proper.

This motion is based upon the following grounds:

(i) Dismissal of the entire action is war-  
ranted pursuant to FRCP 9(b) because, as demonstrated  
in Point I(A) of defendant's accompanying Memorandum  
of Points and Authorities ("defendant's Memorandum"),  
the amended complaint fails to specify the factual  
basis of plaintiff's information and belief for his  
fraud allegations.

(ii) Dismissal of the entire action is also warranted under FRCP 11 because, as demonstrated in Point I(B) of defendant's Memorandum, plaintiff's counsel lacked "knowledge, information and belief" for his certificate that good ground existed to support the amended complaint.

In support of this motion, there are attached hereto (i) the affidavit of Denis McInerney, sworn to on July 3, 1974, together with the various exhibits annexed thereto, (ii) defendant's Memorandum pursuant to this Court's Civil Rule 1-9(b), (iii) a proposed order pursuant to this Court's Civil Rule 1-9(c), (iv) a statement pursuant to this Court's Civil Rule 1-9(g). In addition, this motion is based upon the original complaint, the amended complaint, CPC's answer thereto and all of the proceedings heretofore had herein including, in particular, the deposition of plaintiff Albert Brick, Esq., taken on December 14, 1973, a certified copy of which, together with the exhibits submitted and marked thereat, have been filed with this Court, and this Court's order of April 29, 1974.

Dated: July 3, 1974

CAHILL GORDON & REINDEL

AFFIDAVIT<sup>175</sup>  
Civ. 1503-73  
No. 1503-73  
Civil Action

Richey, J.

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

DENIS McINERNEY, being duly sworn, deposes and says:

1. I am a member of the firm of Cahill Gordon & Reindel, attorneys for defendant CPC International Inc. ("CPC") in the above-captioned action. I am familiar with the facts hereinafter set forth and submit this affidavit:

(a) in support of CPC's motion for an order dismissing plaintiff's amended complaint for failure to comply with the prerequisites of Rules 9(b) and 11 of the Federal Rules of Civil Procedure ("F.R.C.P."); and

(b) in opposition to plaintiff's motion for an order determining that the instant action may be maintained as a class action.

Prior Proceedings

2. The original complaint in this action was filed on July 26, 1973 as a purported class action on behalf of all stockholders of Funk Seeds International, Inc. ("Funk"). The original complaint also contained derivative claims against CPC purportedly on behalf of Funk. (Copies of the original complaint and of the amended complaint are annexed hereto as Exhibits A and B, respectively.)

3. On December 14, 1973, counsel for CPC took the deposition of plaintiff Albert Brick. The examination of Mr. Brick related exclusively to the issue of his adequacy as a purported class representative and to whether he had any basis for the allegations of securities fraud which he had asserted against CPC. As expeditiously as possible following receipt of the transcript of the Brick deposition (plaintiff having failed to bring on his motion for class determination within the time required by Local Rule 1-13(b) of this Court), CPC moved this Court for an order:

- (i) dismissing the complaint for failure to comply with F.R.C.P. 9(b) and 11, or in the alternative,
- (ii) determining that the action could not be maintained as a class or derivative action and granting partial summary judgment dismissing the class and derivative allegations of the complaint, and

(iii) restraining plaintiff and his law partner from soliciting or communicating with any other members of the putative class.

4. On April 26, 1974, argument was heard on CPC's motion. On April 29, 1974 the Court entered an order:

- enjoining plaintiff and his counsel from communicating with members of the putative class;
- striking the derivative allegations of the original complaint;
- granting plaintiff leave to amend and further specify the remaining allegations of his complaint; and
- otherwise denying CPC's motion without prejudice to renewal of any aspect thereof if plaintiff filed an amended complaint.\*

5. The amended complaint in this action was filed on or about May 13, 1974. As was the case with the original complaint, the named plaintiff, Albert Brick, Esq. asserts individual claims and also claims to represent a class of all Funk shareholders against CPC. As was also the case with the original complaint, Mr. Brick, a practicing attorney in the

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\* A copy of the Court's order is annexed hereto as Exhibit C. A copy of the transcript of the oral argument before the Court on April 26, 1974 is annexed hereto as Exhibit D.

firm of Brick and Intrater, is represented by Samuel Intrater, Esq., his law partner who claims the role of counsel for the putative class.

Plaintiff's Motion for Further Amendment

6. On or about June 24, 1974, plaintiff filed a motion "for leave to amend the amended complaint" by "interlineation". The only amendments which plaintiff sought to make were to "correct" the ad damnum clauses of the first and second counts of the amended complaint (by adding three zeros to each) and to insert a U.S.C.A. reference to the jurisdictional allegations. CPC does not oppose plaintiff's motion and will assume (unless the Court orders otherwise) that the complaint may be deemed amended accordingly and CPC's present answer may stand as its answer to the amended complaint as thus revised. This second amendment of plaintiff's complaint, however, does not in any way cure the deficiencies on which defendant's motion is based.

The Amended Complaint

7. The amended complaint contains no derivative claims denominated as such. However, the amended complaint is "verified" in the manner required by F.R.C.P. 23.1 for derivative actions and paragraph 3 of the amended complaint alleges that the payment of a dividend by Funk to CPC "prior to the public offering", and while Funk was a wholly-owned subsidiary of CPC, was "illegal and invalid". This appears to

be an attempt to reinstate the derivative claim which this Court ordered stricken on April 29, 1974. The inability of Mr. Brick to recover on the dividend claim was, we believe, demonstrated in CPC's February 21, 1974 motion papers. Here, we need only note that the dividend was fully disclosed in the subsequent registration statement and prospectus relating to the public sale of Funk common stock, and there is (and could be) no claim that any shareholder was misled with respect to the dividend.

8. The amended complaint is not materially different from the original complaint and does not, we submit, comply with this Court's order of April 29, 1974 granting plaintiff leave to "further specify the remaining allegations of his complaint".

9. The amended complaint, like the original complaint, contains three counts, all based upon the same underlying allegations: alleged violations of "the Securities Exchange Acts of the United States",\* common law fraud and negligence.

10. The basic charging paragraph of the amended complaint -- and presumably the allegations which purport to constitute plaintiff's attempt at the "further specification" referred to in the Court's order of April 29, 1974 -- is quoted

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\* Presumably Section 10(b) of the Securities Exchange Act of 1934, the only substantive provision of any federal statute which is mentioned in the amended complaint. (That reference is in the first paragraph, which sets forth the asserted basis of the Court's jurisdiction.)

below. (Except for irrelevant modifications in language, the only matter added to the allegations of plaintiff's original complaint is underscored.)

"That at the time of such public offering and prior thereto, defendant was aware that certain franchising companies who had contracts with and dealt with Funk Seeds International had indicated a desire to terminate their franchise agreements and arrangements with Funk Seeds; that as a result of various contracts disputes between the said parties, there was an imminent prospect of extensive and multiple litigation with which the said Funk Seeds International, Inc., would become involved. That said defendant further knew or should have known that upon the termination of such franchises, Funk Seeds would be seriously affected by heavy expenses resulting in the take-over from the franchise companies, that Funk Seeds would lose great sums of money from taking over certain inventories from said franchises; that furthermore, Funk Seeds might very well be legally obligated to purchase its inventory from such associates if either party terminated their contract. That all of the foregoing results from the imminent termination of franchise agreements were concealed by the defendant in the prospectus issued at the time of the above described public offering."

[Emphasis added]

11. The above allegations are merely a reassertion, with some conclusory embellishments, of the same claim that was made in the original complaint and without the specificity and factual basis required by F.R.C.P. 9(b) and 11.

12. The only additional modifications of the original complaint of relevance hereto are that plaintiff has added some conclusory class action allegations and has dropped all of his assertions, contained in the original complaint, that his allegations of wrongdoing are made "upon information and belief". By doing so, plaintiff apparently seeks to avoid the pleading

requirement under F.R.C.P. 9(b), as interpreted by the decisions cited in CPC's February 21, 1974 Memorandum of Points and Authorities (pp. 10-14), that allegations of securities fraud based upon "information and belief" must be accompanied by a statement setting forth the factual basis for such allegations. No such statement appeared in the original complaint and no such statement appears in the amended complaint.

13. CPC's answer to plaintiff's amended complaint (Exhibit E hereto) consists of a general denial of any wrongdoing on its part and includes as an affirmative defense the inappropriateness of plaintiff's class claims.

Basis for Defendant's Position

14. For the reasons more fully set forth in CPC's accompanying Memorandum, the amended complaint remains fatally deficient on its face. We respectfully submit that plaintiff may not escape the fundamental pleading requirements of F.R.C.P. 9(b) by the facile device of purporting to allege upon "knowledge" the same facts which were formerly alleged solely upon "information and belief".

(a) In his deposition testimony (previously filed with the Court and annexed as Exhibit C to my February 21, 1974 affidavit in support of CPC's motion to dismiss plaintiff's original complaint), Mr. Brick testified that the complaint was filed solely on the

basis of a brief Forbes Magazine article, shortly after Mr. Brick read it and without factual investigation by either himself or Mr. Intrater (Brick Dep., pp. 18, 54, 57-58).\* The Forbes article (a copy of which is annexed hereto as Exhibit F) contains nothing which would support an accusation of wrongdoing against CPC and makes no such accusation. It merely recites the occurrence of the special Funk dividend while Funk was a wholly-owned subsidiary of CPC, the public offering, and the termination notifications (in November and December 1972) of various Funk associates.

(b) Plaintiff has not indicated that he has obtained any additional "knowledge", or indeed any "information and belief", since his deposition which would permit him to make the allegations contained in his amended complaint.

(c) Notwithstanding the purported modification in the body of plaintiff's amended complaint eliminating allegations of "information and belief", the verification signed by plaintiff at the end of the complaint recites that "the facts set forth in the complaint are true to the best of his knowledge, information and belief". The amended complaint itself, however, does not differentiate as to which allegations

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\* Mr. Brick claimed to have performed certain legal research as to the validity of Funk's special dividend, which was well prior to the time when Mr. Brick purchased his Funk shares (Brick Dep., pp. 18-19, 57). With this Court's dismissal of the derivative claims in this action, the validity of the special dividend is no longer an issue -- notwithstanding plaintiff's insistence upon retaining the allegation in his amended complaint.

are made upon "knowledge" and which are made upon "information and belief".

Thus, it appears that plaintiff and his counsel have misinterpreted this Court's order of April 29, 1974, permitting "further specification" consistent with the requirements of F.R.C.P. 9(b) and 11.

15. CPC opposes plaintiff's class determination motion on the basis of plaintiff's inability to satisfy the "fair representation" requirement of F.R.C.P. 23 as a result of the inherent conflict of interest which arises from the entanglement of the representative and counsel roles in this case. The facts relating to plaintiff's status as the law partner of plaintiff's counsel in the firm of Brick and Intrater, and his performance of various legal services in connection with the commencement and prosecution of this action, are set out more fully in the accompanying Memorandum, which also shows that the amended complaint still fails to comply with the pleading prerequisites for the assertion of a class action under this Court's Rule 1-13(b).

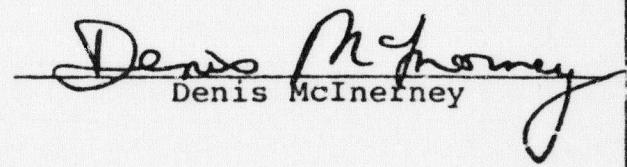
16. Moreover, the date of plaintiff's stock purchase (February 14, 1973) was well after the events complained of in the amended complaint. In such a situation, at the very least there are substantial questions as to (a) whether plaintiff himself is barred, by virtue of the facts known or available to him, from asserting any claim, and (b) whether plaintiff is in such a different position from the class he purports to

represent -- particularly those who bought in the August 1972 public offering -- that he is not an appropriate class representative.

17. In his amended complaint plaintiff purports to represent "All of the stockholders of Funk Seeds International, Inc." Plaintiff does not state whether he means all present stockholders of Funk or all persons who ever purchased Funk common stock. The difference is quite significant, since there may soon be no "class" of present Funk stockholders.

18. On February 27, 1974 CIBA-GEIGY Corporation made a tender offer for Funk stock at \$17 per share. Pursuant to said tender offer CIBA-GEIGY acquired 63% of Funk's Stock. Thereafter CIBA-GEIGY announced its intention to acquire all the remaining outstanding Funk stock and to date, upon information and belief, has acquired a total of 90% of Funk's stock, or a sufficient interest to permit it to perform a short-form merger and thus eliminate all minority stockholders.

19. In any event, and whether plaintiff claims to represent both former and present stockholders of Funk, for the reasons referred to above and set forth in our accompanying memorandum, we respectfully submit that plaintiff's class determination motion should be denied and defendant's motion to dismiss should be granted.

  
Denis McInerney

Sworn to before me this

3<sup>rd</sup> day of July, 1974.

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OPPOSITION TO MOTION TO DISMISS

COMES NOW THE PLAINTIFF, BY AND THROUGH HIS ATTORNEY, AND OPPOSES THE MOTION TO DISMISS FILED HEREIN AND AS GROUNDS THEREFOR STATES AS FOLLOWS:

1. SAID MOTION DOES NOT SET FORTH SUFFICIENT GROUNDS TO WARRANT A DISMISSAL OF THE AMENDED COMPLAINT.
2. THE AMENDED COMPLAINT SETS FORTH A CAUSE OF ACTION AGAINST THE DEFENDANT.
3. SUCH OTHER GROUNDS AS ARE SET FORTH AT TIME OF ARGUMENT.

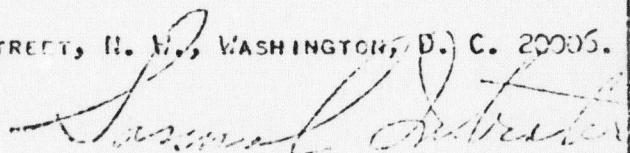
WHEREFORE, PLAINTIFF PRAYS THAT THE MOTION TO DISMISS BE DENIED.



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SAMUEL INTRATER  
ATTORNEY FOR PLAINTIFF  
1025 VERMONT AVENUE, N. W.  
WASHINGTON, D. C. 20005  
347-6953

COPY OF THE FOREGOING OPPOSITION AND ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES MAILED THIS 9TH DAY OF JULY, 1974, TO CAHILL, GORDON AND REINDEL, ATTORNEYS FOR DEFENDANT, 1819 H STREET, N. W., WASHINGTON, D. C. 20005.



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FILED

OCT 29 1974

JAMES F. DAVEY, Clerk

ALBERT BRICK,

:

Plaintiff,

:

-against-

Civil Action  
No. 1503-73

CPC INTERNATIONAL INC.,

:

Richey, J.

Defendant.

:

O R D E R

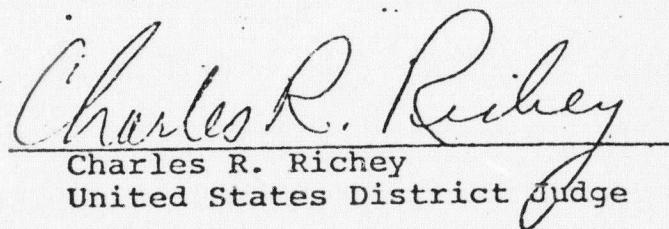
Plaintiff having moved this Court (i) for an Order amending paragraph 1 and the ad damnum clauses of the First and Second Counts of the amended complaint by interliniation, and (ii) for an Order declaring and designating this action as a class action, and defendant having moved this Court for an Order dismissing the amended complaint or, alternatively, striking the class action allegations thereof pursuant to Rules 9(b), 11 and 12 of the Federal Rules of Civil Procedure, and the Court having heard argument by Counsel for both sides and having considered the various written and oral submissions of both sides, it is, this 25 day of *October*, 1974

ORDERED, that upon defendant's consent and without any requirement that defendant interpose a new answer, plaintiff's motion to amend the amended complaint is granted (a) by including, in paragraph 1 thereof, "15 U.S.C. § 77(g)".

and (b) by changing the amount of compensatory damages sought in the ad damnum clauses of the First and Second Counts to "\$75,000,000.00"; and it is

FURTHER ORDERED, that defendant's motion to dismiss the amended complaint pursuant to Rule 9(b) of the Federal Rules of Civil Procedure is denied; and it is

FURTHER ORDERED, that plaintiff's motion to declare and designate this action as a class action and defendant's motion to dismiss the complaint pursuant to Rules 11 and 12 of the FRCP or, alternatively, to strike the class action allegations of the amended complaint are deferred until on or subsequent to the October 31, 1974 status call of this case, without prejudice to defendant's right to make any motion (other than a Rule 9(b) motion) with respect to the foregoing issues.

  
\_\_\_\_\_  
Charles R. Richey  
United States District Judge

Dated: October 25<sup>th</sup>, 1974

Judge Lloyd F. MacMahon  
United States District Court for  
the Southern District of New York

ORDER TRANSFERRING CASE TO JUDGE MacMAHON  
IN THE SOUTHERN DISTRICT OF NEW YORK

The present matter is before the Court on its motion to transfer this action to the Southern District of New York pursuant to Title 28, U.S.C. §1404(a). This action is one of two related cases growing out of certain events, which cases are now pending in this District and in the Southern District of New York.

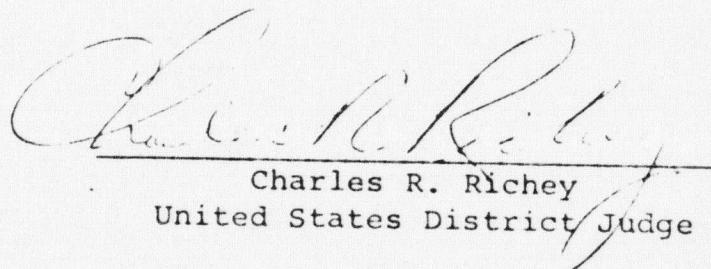
The Court has carefully considered the record in this cause in light of the criteria for transfer under Section 1404(a) of U.S.C. Title 28: "the convenience of parties and witnesses, in the interest of justice". After considering the statutory criteria individually and jointly, the Court has concluded that such transfer should be ordered.

The following factors were considered in the exercise of the Court's discretion: (a) this action could have been brought originally in the Southern District of New York; (2) Judge MacMahon of the Southern District of New York, before whom is pending a case styled Simon v. Funk Seeds International, Inc., 74 Civil 645 (L.F.M.), is able and willing to accept transfer and to treat this action as a related case for all purposes; (3) the facts and circumstances of this and the

Simon case demonstrate that substantial portions of discovery and evidence to be offered at trial is the same as that which would be discovered and presented if each such action were pretried and tried separately in the districts in which they were filed; (4) repetition of similar or identical proof in numerous courts and trials would be wasteful of the time, energy, and money of the litigants and the courts; (5) transfer of this action will promote judicial efficiency and economy in its disposition; and (6) transfer of this action will facilitate the disposition of this and the related Simon case by permitting wherever feasible consolidated pretrial and trial. It is, therefore, this 31<sup>st</sup> day of October, 1974,

ORDERED, that the above-captioned action be and the same is hereby transferred under Title 28, U.S.C. §1404(a), to the Southern District of New York without delay; and it is

FURTHER ORDERED, that the parties to this action shall give notice to Judge MacMahon of the transfer of this related case.



Charles R. Richey  
United States District Judge

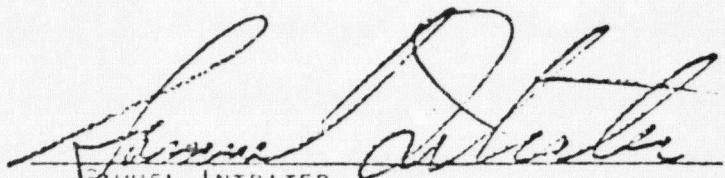
MOTION TO RECERTIFY

COMES NOW THE PLAINTIFF, ALBERT BRICK, BY AND THROUGH HIS ATTORNEY, AND MOVES THIS HONORABLE COURT TO RECERTIFY THE INSTANT ACTION TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, AND AS GROUNDS THEREFOR STATES AS FOLLOWS:

1. THAT THE ABOVE ENTITLED CAUSE WAS ORIGINALLY FILED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AT A DATE PRIOR TO THE FILING OF THE COMPANION ACTION - SIMON v. FUNK SEEDS INTERNATIONAL.
2. THAT SUBSEQUENTLY, THE HONORABLE CHARLES RICHEY, TO WHOM SAID ACTION WAS ASSIGNED FOR TRIAL, WAS INFORMED BY COUNSEL FOR THE DEFENDANT OF THE FILING OF THE SIMON ACTION IN THIS HONORABLE COURT. THAT BOTH OF SAID ACTIONS CONSTITUTED CLASS ACTIONS AGAINST THE DEFENDANT.
3. THAT THE SAID HONORABLE CHARLES RICHEY DETERMINED THAT IT WOULD BE MORE APPROPRIATE FOR BOTH CLASS ACTIONS WHICH INVOLVE THE SAME DEFENDANT TO BE TRIED IN A SINGLE FORUM. THAT UPON SUCH DETERMINATION, AND AFTER CONSULTATION WITH THE HONORABLE LLOYD F. MACMAHON, WHO INDICATED AGREEMENT TO ACCEPT THIS CAUSE FOR TRIAL, THE CASE OF BRICK v. CPC WAS CERTIFIED TO THIS HONORABLE COURT.
4. THAT SINCE SUCH TIME, THE CLASS ACTION PORTIONS OF THE SIMON CASE HAVE BEEN DROPPED FROM SAID LITIGATION. THAT UNDER THE CIRCUMSTANCES THIS COURT NO LONGER HAS BEFORE IT TWO CLASS ACTIONS INVOLVING THE SAME DEFENDANT.
5. THAT IN VIEW OF THE FOREGOING AND THE FACT THAT THE REASON FOR THE INITIAL TRANSFER OF THIS CAUSE FOR TRIAL BEFORE THIS HONORABLE COURT NO LONGER EXISTS, IT WOULD MORE APPROPRIATE AND PROPER FOR THE BRICK CASE TO BE

RECERTIFIED TO THE FORUM IN WHICH IT WAS ORIGINALLY FILED FOR TRIAL THEREIN.

WHEREFORE, PLAINTIFF PRAYS THAT THIS HONORABLE COURT RECERTIFY THE CASE OF ALBERT BRICK V. CPC INTERNATIONAL, INC., TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA FOR TRIAL.

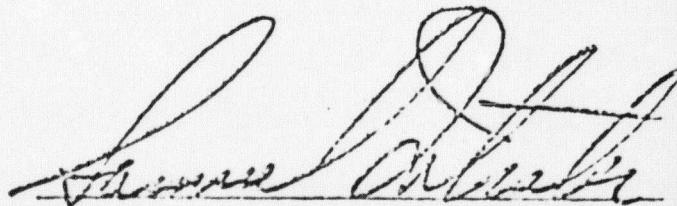


SAMUEL INTRATER  
1025 VERMONT AVENUE, N. W.  
WASHINGTON, D. C. 20005  
347-6953

ATTORNEY FOR PLAINTIFF BRICK

CERTIFICATE OF SERVICE

COPY OF THE FOREGOING MOTION AND ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES MAILED THIS 11TH DAY OF JUNE, 1975, TO BERTHOLD H. HOENIGER, Esq., 1 EAST 44TH STREET, NEW YORK, N. Y.; ROGERS DOERING, Esq., 350 PARK AVENUE, NEW YORK, N. Y.; CAHILL, GORDON AND REINDELL, 80 PINE STREET, NEW YORK, N. Y.; SULLIVAN AND CROMWELL, 48 WALL STREET, NEW YORK, N. Y.; DEBEVOISE, PLIMPTON, LYONS AND GATES, 299 PARK AVENUE, NEW YORK, N. Y. 10017; KAYE, SCHOLER, FIERMAN, HAYS AND HANDLER, 425 PARK AVENUE, NEW YORK, N. Y. 10022; AND ROBERT P. BORSODY, Esq., 292 MADISON AVENUE, NEW YORK, N. Y. 10017., ATTORNEYS FOR DEFENDANT.



AFFIDAVIT IN OPPOSITION  
TO MOTION TO "RETRANSFER"

74 Civ. 4938 (L.F.M.)

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

DENIS McINERNEY, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and of the firm of Cahill Gordon & Reindel, attorneys for CPC International Inc. ("CPC"), defendant in the above-captioned proceeding. I make this affidavit in opposition to plaintiff's motion to "retransfer" this action to the United States District Court for the District of Columbia.

The Asserted Basis For Plaintiff's  
Motion Is Factually Inaccurate

2. This action was transferred to the Southern District of New York from the District of Columbia by order of The Honorable Charles R. Richey of that Court, sua sponte, dated October 31, 1974. In support of his motion to "retransfer" this action to the District of Columbia, plaintiff asserts that this action was transferred here by Judge Richey because he "determined that it would

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be most appropriate that the two class actions [this action and the Simon case, 74 Civ. 645 (L.F.M.)] be tried in a single forum" ("Motion to Recertify"; p. 1, Plaintiff's Memorandum of Points and Authorities). Plaintiff argues that the voluntary dismissal of the class action allegations in Simon, without more, justifies retransferring this litigation to the District of Columbia.

3. Annexed hereto as Exhibit A is a copy of Judge Richey's Order of October 31, 1974 transferring the Brick litigation to the Southern District of New York pursuant to 28 U.S.C. 1404(a) on the basis of "the convenience of the parties and witnesses, in the interest of justice". At that time, Judge Richey had pending before him defendant's application to strike the class action allegations herein. Instead of ruling on that application, or making the determination plaintiff attributes to him, Judge Richey cited six reasons for ordering the transfer of the Brick litigation to the Southern District of New York, to wit:

"this action could have been brought originally in the Southern District of New York;

"(2) Judge MacMahon of the Southern District of New York, before whom is pending a case styled Simon v. Funk Seeds International, Inc., 74 Civil 645 (L.F.M.), is able and willing to accept transfer and to treat this action as a related case for all purposes;

"(3) the facts and circumstances of this and the Simon case demonstrate that substantial portions of discovery and evidence to be offered at trial is the same as that which would be discovered and presented if each such action were pretried and tried separately in the districts in which they were filed;

"(4) repetition of similar or identical proof in numerous courts and trials would be wasteful of the time, energy, and money of the litigants and the courts;

"(5) transfer of this action will promote judicial efficiency and economy in its disposition; and

"(6) transfer of this action will facilitate the disposition of this and the related Simon case by permitting wherever feasible consolidated pre-trial and trial."

Judge Richey's order does not even refer to the fact that the Simon action at that time purported to be a class action, and he obviously did not determine that the reason for transferring the Brick litigation to the Southern District of New York was that both the Simon and Brick litigations were purported class actions.

4. Plaintiff's papers further assert, contrary to Judge Richey's above findings, that the issues in the Brick action are separate and distinct from those of the Simon action "since in the Brick action it has been further alleged that there was an improper declaration of a dividend" by Funk Seeds International, Inc. (Plaintiff's Memorandum p. 2). While that is not a sufficient reason for retransfer in any event, the fact is that substantially similar allegations attacking the dividend were ordered stricken by Judge Richey (in his order dated April 29, 1974, a copy of which is annexed hereto as Exhibit B) because they constituted an improper derivative claim. Plaintiff's re-allegation of this claim in his amended complaint seems clearly inconsistent with that order.

Retransfer of the Brick  
Litigation is Unwarranted

5. There is no reason to disturb Judge Richey's conclusions. On the contrary, New York is the more convenient forum

for most or all of those who have knowledge of the facts in both this case and the Simon case.

a) CPC is located in Englewood Cliffs, New Jersey, just across the Hudson River. Most of the CPC personnel who functioned on the Funk Seeds stock offering and who would be called as witnesses work in Englewood Cliffs and live in or near the Southern District of New York; I know of none who live or work in the District of Columbia.

b) The underwriters involved in the public offering are located in the Southern District of New York. Most, if not all, of their representatives who may be called as witnesses work in and live in or near the Southern District of New York; to the best of my knowledge, none live or work in the District of Columbia.

c) Funk Seeds' headquarters is in Bloomington, Illinois. Most of the Funk Seeds personnel who functioned on the public offering -- and who were responsible for the operations of Funk Seeds both before and after the public offering -- work and reside in that vicinity. Bloomington is no nearer the District of Columbia than it is to New York.

d) The auditors of Funk who may be called as witnesses are located either in the New York or the Chicago, Illinois areas.

e) Negotiations and discussions relating to the Funk Seeds public offering took place in the Southern District of New York, in nearby Englewood Cliffs, New Jersey, or in Illinois; none took place in the District of Columbia.

f) Similarly, the vast bulk of the documents which are relevant to this litigation are located either in the Southern District of New York, Englewood Cliffs, New Jersey, or in Illinois. While some of these were filed with the Securities and Exchange Commission in the District of Columbia, any document so filed would be available at or through CPC.

6. On the other hand, the plaintiff himself has conceded that his knowledge of the facts is confined to his reading of a Forbes Magazine article. He testified at his deposition:

"Q. Was the article in Forbes really the inspiration for this lawsuit?

"A. Absolutely.

"Q. Had you had any thought of bringing suit against CPC prior to reading that article?

"A. No, I had not.

"Q. And subsequent to reading that, you looked up some law?

"A. Yes, I did.

"Q. On what subject, sir?

"A. On the subject of the dividend, whether the corporation had the right to borrow money to pay a dividend, and they didn't except in very circumscribed circumstances, and I realized Forbes was probably correct in what happened in this instance.

"Q. Did you do any other investigation in fact or law in preparation for this lawsuit.

"A. No, I didn't." (Tr. p. 18)

\* \* \*

"Q. Am I correct, then, when your complaint alleges various matters on information and belief, that the only basis for that information and belief is this Forbes Magazine article?

"A. Basically, yes." (Tr. p. 57)

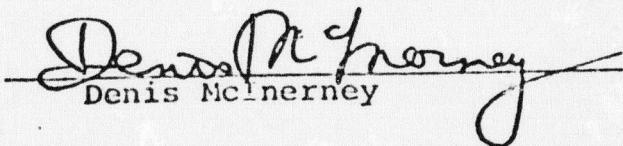
7. While it is true that plaintiff and his counsel practice law together in the firm of Brick and Intrater in the District of Columbia, it is equally true that Judge Richey was well aware of this when he transferred the Brick litigation here because the transfer suited the "convenience of the parties and witnesses [and is] in the interest of justice". Moreover, since the Simon action remains pending in the Southern District of New York, to "retransfer" the Brick litigation to the District of Columbia would, as Judge Richey found, "be wasteful of the time, energy, and money of the litigants and the courts".

Plaintiff's Class Determination Motion Should Now Be Determined

8. Plaintiff's attempt to "retransfer" this action at this juncture would appear to be an attempt to avoid a determination by this Court of plaintiff's own motion for class determination -- a motion which has been fully briefed for approximately one year. Indeed, plaintiff has resisted all of CPC's efforts to have the class determination motion promptly decided (see CPC's letters of November 16, 1974, April 16, 1975 and June 4, 1975 previously filed with this Court), and yet has taken no steps to further the interest of the class which he purports to represent either before or since the docket in the Brick litigation was filed in this Court.

9. CPC's opposition to plaintiff's class determination motion is based, inter alia, upon the inherent conflict arising from plaintiff Brick's dual role as purported class representative and as attorney for the class with an interest in any fee that this action may generate. (See CPC's Memorandum in Opposition to Plaintiff's Motion for Class Determination, dated July 3, 1974, and my affidavit of July 3, 1974 in opposition to said motion.) If we are correct in our opposition, then the basic premise of plaintiff's motion to "retransfer" (i.e., that the Brick litigation is a class action) is a false premise.

10. In any event, as shown above and in our accompanying memorandum, there is no basis for retransferrance here. Instead, there should be an expeditious determination of the pending class action motion, as required by Rule 23, so that the parties will be aware of the true scope of this litigation. We respectfully submit that plaintiff himself should welcome clarification of his status, and that his efforts to avoid the issue may appropriately be considered by the Court in determining whether he is a proper class representative.

  
Denis McInerney

Sworn to before me

this 19th day of June, 1975.

74 Civ. 4938  
No. (L.F.M.)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ALBERT BRICK,  
Plaintiff,  
-against-  
CPC INTERNATIONAL INC.,  
Defendant.

AFFIDAVIT IN OPPOSITION  
TO MOTION TO RETRANSFER  
ACTION

**CAHILL GORDON & REINDEL**  
Attorneys for Defendant  
CPC

To \_\_\_\_\_ Esq  
Attorney for \_\_\_\_\_

7-4-75

Motions denied. The issues in this action are still identical with those in Simon v. Fank Seeds, 201 U.S. 744, 645. Both actions should be consolidated. They are consolidated to promote judicial economy. So ordered.

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